

No. 4452

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United States

1429

Circuit Court of Appeals

For the Ninth Circuit.

WILLIAM CARLSON, JOHN SAUDEN and
AETNA LIFE INSURANCE COMPANY,
a Corporation, Claimants of the Motorship
"Three Sisters,"

Appellants,

vs.

A. PALADINI, INC., a Corporation,

Appellee.

Apostles on Appeal.

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of
California, Third Division.

FILED

JAN 23 1925

F. D. BONGKTON,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California.

Clerk's Office.

No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., a Corporation, Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

PRAECIPE FOR APOSTLES ON APPEAL.

To the Clerk of Said Court:

Sir: Please include in the apostles on appeal in the above cause the following:

1. Caption and statement required by Subdivision 1, Sec. 1, of Rule 4, Rules in Admiralty, United States Circuit Court of Appeals, 9th Circuit.

2. Libel and petition of A. Paladini, Inc.

3. Answers of William Carlsen and John Sauder to said libel and petition.

4. Stipulation and order filed May 29, 1924, allowing filing of claim and answer of Aetna Life Insurance Co.

5. Answer of Aetna Life Insurance Co. to said libel and petition.

6. All testimony taken at the trial of said cause on August 5, 6, 7 and 12, 1924.

7. Deposition of John True Urquhart, filed August 12, 1924. (Petitioner's Exhibit *and* 4, and Claimant's Exhibit "A" are to be sent up to the

Circuit Court of Appeals in their original forms, pursuant to stipulation and order.) [1*]

8. District Court order denying liability, entered September 10, 1924.

9. District Court opinion, filed September 10, 1924.

10. Final decree, entered October 15, 1924.

11. Assignment of errors.

BELL & SIMMONS,
 REDMAN & ALEXANDER,
 HEIDELBERG & MURASKY,
 JOSEPH J. McSHANE,

Proctors for Claimants and Appellants.

[Endorsed]: Filed Nov. 18, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
 [2]

STATEMENT OF CLERK U. S. DISTRICT COURT.

In the Southern Division of the United States District Court, Northern District of California, Third Division.

No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., Owner of the Motorship, "THREE SISTERS," for Limitation of Liability.

*Page-number appearing at foot of page of original certified Apostles on Appeal.

PARTIES.

Petitioner: A. Paladini, Inc., a Corporation.

Claimants: William Carlson, John Sauder, Aetna Life Insurance Company, a Corporation.

PROCTORS.

For Petitioner: IRA S. LILLICK, Esq., and HOEFLER, COOK & LINGENFELTER, Esqs.

For Claimants: BELL & SIMMONS, REDMAN & ALEXANDER, JOSEPH J. McSHANE, Esq., and HEIDELBERG & MURASKY.

[3]

PROCEEDINGS.

1924.

March 4. Filed petition for limitation of liability. Filed order of reference for purpose of making appraisalment.

14. Filed report on appraisalment.

21. Filed order approving report of Commissioner on appraisalment.

Filed order for monition and restraining order.

Issued monition.

Filed stipulation (bond) in the sum of \$15,918.00.

28. Filed answer of William Carlson and John Sauder.

Filed monition on return, showing personal service by U. S. Marshal on Carlson and Sauder.

- April 16. Filed deposition of John True Urquhart.
- May 27. Filed answer of Aetna Life Insurance Company.
29. Filed stipulation and order allowing Aetna Life Insurance Company to file claim and answer.
- July 29. Filed report of Commissioner on Claims, with stipulation and order confirming same.
- Filed affidavit of publication of monition.
- August 5. This cause came on to-day for hearing before the Honorable John S. Partridge, Judge.
6. Hearing resumed.
7. Hearing resumed.
12. Hearing resumed, and cause submitted on briefs.
- Sept. 10. Filed opinion. Ordered liability denied *in toto*.
- Oct. 15. Filed final decree.
- Nov. 18. Filed notice of appeal.
- Filed assignment of errors.
- Filed bond for costs on appeal, and staying execution. [4]

In the District Court of the United States of America, in and for the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., a Corporation, Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

LIBEL AND PETITION.

To the Honorable Judges of the District Court of the United States in and for the Northern District of California, Third Division:

The libel and petition of A. Paladini, Inc., a corporation, organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the City and County of San Francisco, the owner of the motorship "Three Sisters," her tackle, apparel and furniture, in a cause of limitation of liability, civil and maritime, respectfully shows:

I.

Petitioner is, and at all the times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of California, having its office and principal place of business at San Francisco, and within the Northern District of the State of California and the jurisdiction of this Court, and is and at all of said times was engaged in the business of owning and operating

ships in the waters of the [5] Pacific Ocean and its inlets in pursuit of said corporation's general business, to wit, that of fishing, and is and at all of said times was the owner of the motorship "Three Sisters," which said motorship is now lying in the port of San Francisco and within the jurisdiction of this Honorable Court.

II.

On the 8th day of June, 1923, said motorship left the port of Point Reyes, in the State of California, on a voyage, having in tow a barge bound for the port of San Francisco, in the State of California, where said voyage was terminated on the 8th day of June, 1923. At the time of leaving Point Reyes she was in all respects properly manned and equipped and was in all respects staunch and seaworthy.

III.

While on said voyage, and while towing said barge, in the morning of the 8th day of June, 1923, and while out of said port of Point Reyes about one hour and thirty minutes, and off the coast of California, said motorship and her tow encountered a succession of long ground swells. Upon encountering said ground swells the master of said motorship caused her to proceed on said voyage under half-speed. The master was at the wheel. Suddenly, while said motorship was on the receding side of one of said ground swells, and while going at half speed, as aforesaid, the one side of the bridle upon said barge was seen by the master of said motorship to part. The master immediately there-

after, and before any further breaking of said bridle, disconnected the engines of said motorship from her propeller shaft, but while not under any power from said motorship, but while being carried forward by the force of said ground swells and of the seas, the other side of said bridle upon said barge parted, completely disconnecting said motorship from her tow. At the time of said voyage, petitioner maintained a regular service by the motorship [6] "Corona" for the transportation of persons and property from said port of Point Reyes to said port of San Francisco, which service was at said time used for accommodation of the employees of Healy-Tibbitts Construction Company, and the said motorship "Three Sisters" was not used in said service. At the time said motorship "Three Sisters" left the port of Point Reyes, one William Carlsen and one John Sauder, together with five (5) other men, all being employees of said Healy-Tibbitts Construction Company, were at said port of Point Reyes awaiting transportation to the port of San Francisco upon the said motorship "Corona." When said Carlsen and said Sauder, and the said other men, ascertained that said motorship "Three Sisters" was about to depart from the port of Point Reyes for the port of San Francisco, towing said barge, they refused to await passage on said motorship "Corona" and boarded said barge. While said motorship "Three Sisters" was towing said barge, and while said motorship "Three Sisters" and her tow were still within the harbor of the port of Point Reyes, said Carlsen

and said Sauder, and the said other men, signaled to the master of said motorship "Three Sisters" that they desired to come aboard said motorship "Three Sisters," and the master accordingly brought said motorship "Three Sisters" alongside of said barge and said Carlsen and said Sauder, and the said other men, came aboard said motorship "Three Sisters" When said Carlsen and said Sauder, and the said other men, came aboard said motorship "Three Sisters" the master thereof warned them, and each of them, to stay away from the stern of said vessel and from the tow-line which was attached to the mast of said motorship "Three Sisters." At the time the said Carlsen and said Sauder, and the other said men, came aboard the motorship "Three Sisters," she had not as yet encountered any ground swells, but was upon a calm sea. The motorship "Three Sisters" then proceeded upon her way upon the [7] voyage as aforesaid. All of the men who came aboard the motorship "Three Sisters," with the exception of said Carlsen and said Sauder, and two of said other men, stationed themselves at points away from the stern and said tow-line, but said Carlsen and said Sauder and the two of said other men, stationed themselves at the stern of said motorship "Three Sisters" and near said tow-line and proceeded to engage in a game of cards. Upon encountering said ground swells, as aforesaid, the master of said motorship "Three Sisters" warned the said Carlsen and said Sauder, and the other two men engaged in the game of cards, to stay away from the stern of

said vessel and from said tow-line, but said Carlsen and said Sauder, and the other two men engaged with them in said game of cards, remained at the stern and were there at the time when said bridle upon said barge parted, as aforesaid. Upon the parting of the bridle upon said barge, the tow-line whipped back and struck the said Carlsen and the said Sauder, inflicting upon them certain bodily injuries. Said Carlsen and said Sauder knew, or by the exercise of ordinary care for their own safety, could and should have known, that said place upon the motorship "Three Sisters" where they were stationed at the time of the breaking of said bridle, was a place dangerous to life and limb for anyone to remain in while said motorship was engaged in towing said barge, and in going to and remaining at said place said Carlsen and said Sauder failed to exercise ordinary care. Had the said Carlsen and the said Sauder exercised ordinary care for their own safety as men of ordinary prudence would have done under the same circumstances, by remaining away from said place where they were injured, they could and would have escaped all injury from the breaking of said bridle.

IV.

The said injuries to the said Carlsen and the said Sauder were in no wise caused by fault on the part of said [8] motorship "Three Sisters," her master, officers or crew, but were occasioned solely by reason of the negligence of said Carlsen and said Sauder in that they, the said Carlsen and said Sauder, did not keep away from the stern of said motor-

ship "Three Sisters" nor from said tow-line as they were warned by the master of said motorship "Three Sisters" to do, and as they, as prudent men, should have done.

V.

Said accident happened and the loss and damage referred to were done, occasioned and incurred without fault on the part of petitioner, and without its privity or knowledge. Nevertheless, certain actions at law have been commenced against your petitioner, the following being a list of said proceedings:

(a) An action at law brought in the Superior Court of the State of California, in and for the City and County of San Francisco, against petitioner, by said William Carlsen, whose residence is 207 Anderson Street, San Francisco, California, and who claims to recover in tort for personal injuries received in said accident. The attorneys in said action for said William Carlsen are Messrs. Joseph J. McShane and Heidelberg & Murasky, whose address is Flood Building, San Francisco, California, and the amount of damages claimed in the complaint is the sum of fifty thousand nine hundred sixty dollars (\$50,960).

(b) An action at law brought in the Superior Court of the State of California, in and for the City and County of San Francisco, against petitioner by said John Sauder, whose residence is 22 Polk Street, San Francisco, California, and who claims to recover in tort for personal injuries received in said accident. The attorneys in said action for said John Souder are Messrs. Joseph J. McShane and

Heidelberg & Murasky, whose address is Flood Building, San Francisco, California, and the amount of damages claimed in the complaint is the sum of [9] fifty thousand eight hundred dollars (\$50,800).

In addition to the above, which are all the claims of which petitioner now has knowledge, petitioner is in fear that other suits or actions may be brought against it or the motorship "Three Sisters" by other parties who may have sustained loss, damage or injury by reason of said accident. There are no other claims or demands against, nor liens upon said motorship "Three Sisters," or against petitioner, arising on, out of, or in connection with said voyage so far as is known to petitioner. Said motorship was not damaged, lost or abandoned on on said voyage.

VI.

On information and belief, petitioner avers that the value of said motorship "Three Sisters" at the close of said voyage, did not exceed the sum of Ten Thousand Dollars (\$10,000), and that she had no freight pending at the close of said voyage, and petitioner avers that the amount of the claims in the actions already begun against said petitioner as aforesaid, far exceed the value of its interest in said motorship "Three Sisters" and her freight pending.

VII.

Petitioner desires to contest its liability and the liability of said motorship "Three Sisters" for the injuries, losses and damages, whether to persons or to property, caused, occasioned or incurred upon

said voyage, and particularly the loss and damage incurred by said Carlsen and said Sauder, and petitioner also hereby claims the benefit of limitation of liability as provided in Sections 4282 and 4289, inclusive, of the Revised Statutes of the United States, and also hereby claims the benefit of limitation of liability provided in the Act of June 26, 1884, and particularly the benefit of the provisions of Section 18 of said Act (23 St. L. 57), and also [10] hereby claims the benefit of limitation of liability provided in Section 4289 of the Revised Statutes of the United States as amended by the Act of June 19, 1886, (24 St. L. 79), and particularly Section 4 of the last-mentioned Act, and also hereby claims the benefit of any and all Acts of the Congress of the United States, if any, amendatory of or supplemental to the several sections and acts aforesaid, or any portion thereof, and petitioner is now ready, able and willing, and hereby offers to give its stipulation, or stipulations, with sufficient sureties conditioned for the payment into this court by petitioner of the value of said motorship "Three Sisters," if required, as she was immediately after the termination of said voyage, upon which said accident occurred, with interest thereon, together with her freight pending, if any was pending, though petitioner respectfully represents that none was pending, such payment to be made whenever the same shall be ordered herein.

VIII.

While not in any way admitting your petitioner

is under any liability for the losses and damages occurring as aforesaid, and petitioner here claiming and reserving the right to contest in this court any liability therefor, either personally or of said motorship "Three Sisters," petitioner claims and is entitled to have limited its liability, if any, in the premises, to the amount or value of its interest, as aforesaid, in the said motorship "Three Sisters" as it was at the close of said voyage.

WHEREFORE, your petitioner prays that this Court will order due appraisement to be had of the value of said motorship "Three Sisters," her engines, boats, tackle, apparel, furniture and appurtenances, as the same were immediately after the close of said voyage, and order and cause due appraisement to be had of the amount of the freight pending, if any, at the close of said voyage, and that stipulations or undertakings may be given [11] by petitioner, with sureties conditioned for the payment into court of such appraised value whenever the same shall be ordered, and that this Court will upon the filing of such stipulations by petitioner, issue, or cause to be issued, a monition against William Carlsen and John Sauder, and all other persons claiming damages of petitioner or against said motorship "Three Sisters" by reason of injuries to persons, or to property occurring or arising upon said voyage, or resulting from the losses or damages resulting from said accident, citing them, and each of them, to appear before this Court, and there make due proof of their respective claims, at a time to be therein named, as to

all of which claims petitioner will contest its liability and the liability of said motorship "Three Sisters."

That in case it shall be found that any liability exists upon the part of petitioner, by reason of injuries to persons, or loss of, or damage to, property, done, occasioned or incurred upon said voyage, and particularly the losses and damages suffered by said William Carlsen and said John Sauder (which petitioner denies and prays may be contested in this court), then that such liability shall in no event be permitted by this Court to exceed the value of said motorship "Three Sisters," and her freight, if any, pending at the close of the voyage upon which said accident occurred, as aforesaid, and as such values may be determined by the appraisement of such interests as hereinbefore prayed; and that the moneys secured to be paid into court, as aforesaid, shall, and may, after payment of costs and expenses therefrom, be divided *pro rata* among the several claimants in proportion to the amounts of their respective claims as by this Court adjudged; and that in the meantime, and until final judgment of this Court shall be rendered and entered herein, this Court shall enter an order herein restraining the prosecution of the aforesaid action of said William Carlsen and the action of said [12] John Sauder, and the commencement and prosecution hereafter of all or any suit, or suits, action, or actions, or legal proceedings of any nature or description whatever, except in the present proceeding against petitioner

or the motorship "Three Sisters" in respect of any claim, or claims, losses or damages, suffered in or arising out of said accident; and that petitioner may have and receive such other and further relief in the premises as shall be meet and equitable.

HOEFLER, COOK & LINGENFELTER,
IRA S. LILLICK,

Proctors for Petitioner. [13]

State of California,

City and County of San Francisco,—ss.

J. Chicca, being first duly sworn, deposes and says:

That he is an officer, to wit, the Secretary, of A. Paladini, Inc., a corporation, the petitioner herein; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

J. CHICCA.

Subscribed and sworn to before me this 4th day of March, 1924.

[Seal]

E. J. CASEY,

Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Mar. 4, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.

[14]

In the District Court of the United States of America, in and for the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., a Corporation, Owner of the Motorship "THREE SISTERS" for Limitation of Liability."

ANSWER TO LIBEL AND PETITION.

Now come William Carlson and John Sauder in opposition to the libel and petition filed by A. Paladini, Inc., a corporation, and for answer thereto, deny, admit and allege as follows:

Deny that at the time of leaving Point Reyes said "Three Sisters" was in all or any respects properly manned or equipped, or was in all or any respects staunch or seaworthy.

Deny that said motorship, on said voyage, encountered any long, or any ground swells or that said motorship at said time proceeded during said voyage at half speed; admits that a tow-rope or bridle being used by said motorship as a part of her apparel or equipment parted, and alleges that at said time said bridle or tow-rope was in an unsound, rotten and defective condition, and deny that said bridle or tow-ropes parted or broke by reason of said or any ground swells, or otherwise, than because of its being insufficient and in an unsound, rotten and defective condition, and allege

that said tow-rope or bridle parted or broke because of its said condition and by reason of its being subjected to too great a strain.

Denies that petitioner, at said time, maintained a regular [15] transportation service for persons by the motorship "Corona" and deny that said service was maintained for the accommodation of employees of Healy-Tibbitts Construction Company, and deny that said "Three Sisters" was not used in said service.

Deny that said Carlson and Sauder, or either of them, refused to await passage on the "Corona" but allege that said persons were on said "Three Sisters" at the invitation and request of the captain, or master, thereof and as passengers thereon.

Deny that said Carlson and Sauder, or either of them, signalled the master, or captain, of said "Three Sisters" to come alongside a wharf and allow them to board said motorship, but allege that said master, or captain, of said motorship waited at Point Reyes for twenty-four hours for the purpose of having said persons come aboard said motorship for the purpose of being transported as passengers thereon from Point Reyes to San Francisco at the invitation, request and demand of the master, or captain, of said "Three Sisters."

Deny that anyone ever warned said Carlson and Sauders, or either of them, to stay away from the stern or tow-line of said motorship.

Deny that said Carlson and Sauder, or either of them, knew, or should have known, that the stern of said vessel was, at said time, a place dangerous

to life or limb, and allege that it was impracticable for them to occupy any other place on said motorship, and deny that said Carlson and Sauder, or either of them, failed to exercise ordinary care for their own safety, and allege that said persons occupied the stern part of said motorship under the direction of the master thereof.

Deny that the injury suffered by said Carlson and Sauder, or either of them, was not caused by fault on the part of said motorship, and allege the facts to be as set forth in their complaints [16] filed in the Superior Court of the State of California, and attached hereto as Exhibits "A" and "B," and made a part hereof.

Deny that said injuries were without fault on the part of petitioner or without its privity or knowledge.

WHEREFORE, said Carlson and Sauder, and each of them, pray that the relief prayed for by petitioner in its libel and petition be denied, and ask that petitioner be denied a limitation of liability herein; and that said Carlsten and Sauder, and each of them, be not restrained from proceeding with the prosecution of their said action or actions.

Said Carlson further prays that his claim in the sum of Fifty Thousand Nine Hundred Sixty (\$50,960) be allowed for damages suffered by him because of personal injuries received by him by being struck by said tow-rope, as is more fully set forth in his said complaint attached hereto as a part thereof and marked Exhibit "A," and

Said Sauder further prays that his claim in the sum of Fifty Thousand Eight Hundred (\$50,800) Dollars be allowed for damages suffered by him because of personal injuries received by being struck by said tow-rope, as is more fully set forth in his said complaint attached hereto as a part hereof and marked Exhibit "B."

HEIDELBERG & MURASKY and
JOS. J. McSHANE,

Proctors for Said Carlson and Sauder. [17]

State of California,
City and County of San Francisco,—ss.

William Carlson, being first duly sworn, deposes and says: That he is one of the claimants in the above-entitled action; that he has read the foregoing answer to libel and petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information and belief, and that as to those matters he believes it to be true.

WILLIAM CARLSON.

Subscribed and sworn to before me this 27th day of March, 1924.

[Seal]

L. A. MURASKY,
Court Commissioner of the City and County of
San Francisco, State of California. [18]

EXHIBIT "A."

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. —.

Dept. No. —.

WILLIAM CARLSON,

Plaintiff,

vs.

A. PALADINI, INC., a Corporation,

Defendant.

COMPLAINT FOR DAMAGES FOR PERSONAL INJURIES.

Plaintiff complains of defendant and for cause of action alleges:

I.

Defendant herein is now, and was, at all times mentioned in this complaint, a corporation organized and existing under and by virtue of the laws of the State of California, doing business in said state and having its principal place of business in the City and County of San Francisco, State of California.

II.

Said defendant is now, and was, at all times herein mentioned, engaged in *the* business of the wholesaling and catching of fish, and owned and operated boats, ships or vessels, and in particular owned and operated a boat, vessel or ship known as "Three

Sisters,' and was the owner of certain wharves in the State of California, and particularly a wharf located at, or near, Point Reyes in the State of California. [19]

III.

Healy-Tibbitts Construction Company is now, and was, at all times herein mentioned, a corporation organized and existing under and pursuant to the laws of the State of California and having its principal place of business in the City and County of San Francisco, State of California.

IV.

The business of said Healy-Tibbitts Construction Company, among other things, was that of constructing wharves and as such constructed under contract said wharf located at, or near, Point Reyes, California, for said defendant.

V.

Plaintiff herein was, on the 8th day of June, 1923, and for a long time prior thereto had been, in the employ of said Healy-Tibbitts Construction Company as a foreman of a pile-driving crew, and was engaged as such employee of said Healy-Tibbitts Construction Company in the construction of said wharf owned by defendant.

VI.

Plaintiff herein, on said 8th day of June, 1923, and for a long time prior thereto, resided in the City and County of San Francisco, State of California, and as a part of the contract existing between said Healy-Tibbitts Construction Company and said defendant for the construction of said

wharf, defendant herein agreed with said Healy-Tibbitts Construction Company to transport said plaintiff to and from said City and County of San Francisco to Point Reyes and the wharf located thereabouts.

VII.

On the 8th day of June, 1923, plaintiff herein was a passenger as aforesaid on one of the boats, ships or vessels owned and operated by said defendant, to wit: "Three Sisters," and while said plaintiff was a passenger on said boat, ship or [20] vessel was engaged in towing a heavy barge with a pile-driver located thereon from said Point Reyes, or thereabouts, to the City and County of San Francisco, State of California, and as a means of towing said barge said defendant used a tow-rope and bridle which was rotten, unsound and defective, and its rotten, unsound and defective condition was unknown to plaintiff, but was known, or could have been discovered or known to defendant herein by the exercise of ordinary care or *negligence*.

VIII.

On said 8th day of June, 1923, while plaintiff was situate on said boat, ship or vessel, and while said defendant was engaged in towing said barge, as aforesaid, said tow-rope and bridle, by reason of its rotten, unsound and defective condition, broke and violently struck said plaintiff, causing plaintiff then and there to sustain severe personal injuries.

IX.

Said injuries then and there inflicted upon plaintiff consisted of the following, to wit: Concussion of the brain; one of the cervical vertebrae of his neck was dislocated; severe abrasions of the head, neck, chest, body, arms and shoulders; he was rendered sick, sore and disabled and suffered a severe nervous shock. Said injuries to the brain and neck are permanent in their nature and have totally incapacitated plaintiff from ever again working at his trade.

X.

At the time of receiving said injuries and for a long time prior thereto, plaintiff was, and had been, a strong, healthy, vigorous man and was earning wages in the sum of Sixty (\$60) Dollars per week. [21]

XI.

By reason of his injuries plaintiff herein was confined to his bed for approximately three weeks, and has ever since said time been compelled to wear a leather Thomas collar about his neck, and has lost wages which he otherwise would have earned in the sum of Sixty (\$60.00) Dollars per week from said 8th day of June, 1923, to the date hereof, aggregating Nine Hundred Sixty (\$960) Dollars.

XII.

By reason of the premises plaintiff has sustained damages in the sum of Fifty Thousand Nine Hundred Sixty (\$50,960) Dollars, no part of which has been paid by defendant.

WHEREFORE, plaintiff herein prays judgment against said defendant in the sum of Fifty Thousand Nine Hundred Sixty (\$50,960) Dollars, and costs of suit.

JOSEPH J. McSHANE and
HEIDELBERG & MURASKY,
Attorneys for Plaintiff Herein. [22] .

EXHIBIT "B."

In the Superior Court of the State of California,
in and for the City and County of San Francisco.

No. —.

Dept. No. —.

JOHN SAUDER,

Plaintiff,

vs.

A. PALADINI, INC., a Corporation,

Defendant.

COMPLAINT FOR DAMAGES FOR PERSONAL INJURIES.

Plaintiff complains of defendant and for cause of action alleges:

I.

Defendant herein is now, and was, at all times mentioned in this complaint, a corporation organized and existing under and by virtue of the laws of the State of California, doing business in said state and having its principal place of business in

the City and County of San Francisco, State of California.

II.

Said defendant is now, and was, at all times herein mentioned, engaged in the business of the wholesaling and catching of fish, and owned and operated boats, ships or vessels, and in particular owned and operated a boat, vessel or ship known as "Three Sisters" and was owner of certain wharves in the State of California, and particularly a wharf located at, or near, Point Reyes in the State of California. [23]

III.

Healy-Tibbitts Construction Company is now, and was, at all times herein mentioned, a corporation organized and existing under and pursuant to the laws of the State of California and having its principal place of business in the City and County of San Francisco, State of California.

IV.

The business of said Healy-Tibbitts Construction Company, among other things, was that of constructing wharves, and as such constructed under contract said wharf at, or near, Point Reyes, California, for said defendant.

V.

Plaintiff herein was, on the 8th day of June, 1923, and for a long time prior thereto had been, in the employ of said Healy-Tibbitts Construction Company as a pile-driver, and was engaged as such employee of said Healy-Tibbitts Construction Com-

pany in the construction of said wharf owned by defendant.

VI.

Plaintiff herein, on said 8th day of June, 1923, and for a long time prior thereto, resided in the City and County of San Francisco, State of California, and as a part of the contract existing between said Healy-Tibbitts Construction Company and said defendant for the construction of said wharf, defendant herein agreed with said Healy-Tibbitts Construction Company to transport said plaintiff to and from said City and County of San Francisco to Point Reyes and the wharf located thereabouts.

VII.

On the 8th day of June, 1923, plaintiff herein was a passenger as aforesaid on one of the boats, ships or vessels [24] owned and operated by said defendant, to wit: "Three Sisters," and while said plaintiff was a passenger on said boat, ship or vessel, as aforesaid and was being transported by defendant from said wharf to said City and County of San Francisco, said boat, ship or vessel was engaged in towing a heavy barge with a *pikedriver* located thereon from said Point Reyes, or thereabouts, to the City and County of San Francisco, State of California, and as a means of towing said barge said defendant used a tow-rope and bridle which was rotten, unsound and defective, and its rotten, unsound and defective condition was unknown to plaintiff, but was known or could have

been discovered or known to defendant herein by the exercise of ordinary care or negligence.

VIII.

On said 8th day of June, 1923, while plaintiff was situate on said boat, ship or vessel, and while said defendant was engaged in towing said barge, as aforesaid, said tow-rope and bridle, by reason of its rotten, unsound and defective condition, broke and violently struck said plaintiff, causing plaintiff then and there to sustain severe personal injuries.

IX.

Said injuries then and there inflicted upon plaintiff consisted of the following, to wit: fractured skull and concussion of the brain, causing partial paralysis of his right side and arm; severe abrasions of the head, neck, chest, body, arms and shoulders and he was rendered sick, sore and disabled, and suffered a severe nervous shock, and will continue to suffer great physical pain and mental anguish. Said injuries are permanent in their nature and [25] have totally incapacitated plaintiff from ever again working at his trade of pile-driving, and his memory has been seriously impaired.

X.

At the time of receiving said injuries and for a long time prior thereto, plaintiff was, and had been, a strong, healthy, virgorous man and was earning wages in *the of* Fifty (\$50) Dollars per week.

XI.

By reason of said injuries plaintiff was confined to his bed for two months and has lost wages which

he otherwise would have earned in the sum of Fifty (\$50) Dollars per week from said 8th day of June, 1923, to date hereof, aggregating Eight Hundred (\$800) Dollars.

XII.

By reason of the premises plaintiff has sustained damages in the sum of Fifty Thousand Eight Hundred (\$50,800) Dollars, no part of which has been paid by defendant.

WHEREFORE, plaintiff herein prays judgment against said defendant in the sum of Fifty Thousand Eight Hundred (\$50,800) Dollars, and costs of suit.

JOSEPH J. McSHANE and
HEIDELBERG & MURASKY,
Attorneys for Plaintiff Herein. [26]

Receipt of a copy of the within answer to libel and petition is hereby admitted this 28th day of March, 1924.

IRA S. LILLICK,
HOEFLER, COOK & LINGENFELTER,
Attorneys for Petitioner.

[Endorsed]: Filed Mar. 28, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[27]

In the District Court of the United States in and for the Southern Division of the Northern District of California, Third Division.

IN ADMIRALTY.—No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., a Corporation, Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

STIPULATION AND ORDER ALLOWING FILING OF CLAIM AND ANSWER OF AETNA LIFE INSURANCE COMPANY.

IT IS HEREBY STIPULATED AND AGREED by A. Paladini, Inc., the petitioner herein, and William Carlson and John Sauder, claimants herein, by their respective proctors, that Aetna Life Insurance Company, a corporation, may intervene and file its claims and answers in the above-entitled proceedings with the Clerk of this court, and with the Commissioner heretofore appointed by said Court herein.

Dated: May 23, 1924.

IRA S. LILLICK,
HOEFLER, COOK & LINGENFELTER,
Proctors for Petitioner A. Paladini, Inc.

JOS. McSHANE,
HEIDELBERG & MURASKY,
Proctors for William Carlson and John Sauder,
Claimants.

It is so ordered.

May 29, 1924.

PARTRIDGE,
District Judge.

[Endorsed]: Filed May 29, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [28]

In the District Court of the United States in and for the Southern Division of the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

ANSWER OF AETNA LIFE INSURANCE COMPANY TO LIBEL AND PETITION.

To the Honorable, the Judge of the Above-entitled Court:

Now comes Aetna Life Insurance Company, a corporation, and having filed with Francis Krull, Esq., the Commissioner appointed in the above proceeding by this Court, its joint claims in intervention with John Sauder and William Carlson, makes answer to the libel and petition for limitation of liability herein as follows:

I.

That said Aetna Life Insurance Company is a corporation organized and existing under and by

virtue of the laws of the State of Connecticut, and duly authorized and licensed to transact the business of workmen's compensation insurance in the State of California and to issue policies of workmen's compensation insurance pursuant to the Workmen's Compensation Insurance and Safety Act of 1917 of the State of California.

II.

Alleges that on the 8th day of June, 1923, John Sauder and William Carlson were, and for a long time prior thereto had been, in the employ of Healy-Tibbitts Construction Company, a corporation [29] organized and existing under and pursuant to the laws of the State of California, and engaged in the business, among other things, of constructing wharves, and as such was constructing under contract a wharf located at or near Point Reyes, California, for the petitioner herein; and said John Sauder and said William Carlson were engaged as such employees of said Healy-Tibbitts Construction Company in the construction of said wharf owned by said petitioner.

III.

Alleges that said John Sauder and William Carlson on the 8th day of June, 1923, and for a long time prior thereto, resided in the City and County of San Francisco, State of California, and as a part of the contract existing between said Healy-Tibbitts Construction Company and said petitioner for the construction of said wharf, the petitioner herein agreed with said Healy-Tibbitts Construction Company to transport said John Sauder and Will-

iam Carlson to and from said City and County of San Francisco to Point Reyes, and the wharf located thereabouts.

IV.

Alleges that on the 8th day of June, 1923, said John Sauder and said William Carlson were passengers, as aforesaid, on one of the boats, ships or vessels owned and operated by said petitioner, to wit, "Three Sisters," and while said John Sauder and said William Carlson were passengers on said boat, ship or vessel, as aforesaid, and were being transported from said wharf to said City and County of San Francisco, said ship, boat or vessel was engaged in towing a heavy barge with a pile-driver located thereon from said Point Reyes to the City and County of San Francisco, State of California. As a means of towing said barge said petitioner used a tow-rope and bridle which was rotten, unsound and defective, and its rotten, unsound and defective condition was unknown to said John Sauder or said William Carlson or to this claimant, but was known, or could have been discovered or known to the petitioner herein by the exercise of ordinary care and diligence. [30]

V.

Alleges that on said 8th day of June, 1923, while said John Sauder and said William Carlson were situate on said boat, ship or vessel, and while said petitioner was engaged in towing said barge, as aforesaid, tow-rope and bridle, by reason of its rotten, unsound and defective condition, broke and violently struck said John Sauder and said William

Carlson, causing them then and there to sustain severe personal injuries.

VI.

Alleges that at the time of the accident and injuries, as aforesaid, the said John Sauder and the said William Carlson were regularly employed by the said Healy Tibbitts Construction Company under contracts of hire, and at the time of said accident were acting in the regular course of their duties, and in the usual course of the business of said employer, and were performing services incident to their said employment, and were acting within the course of their employment, and that said accident and injuries arose out of and in the course of said employment, and were proximately caused thereby, and at the same time the said employer and the said John Sauder and the said William Carlson were subject to the provisions of the Workmen's Compensation Insurance and Safety Act of 1917.

VII.

Alleges that the said John Sauder and the said William Carlson pursuant to the said Workmen's Compensation Insurance and Safety Act of 1917 of the State of California, made legal claims against their employer for compensation and medical and surgical treatment, medicines and appliances required to be furnished to injured employees under the provisions of said Act.

VIII.

Alleges that at the time of the aforesaid accident and injuries the said Aetna Life Insurance Company insured the said Healy Tibbitts Construction Com-

pany against liability for compensation [31] and for medical and surgical treatment, medicines and appliances under the aforesaid Act, and as such insurance carrier assumed the liability of said employer to pay the compensation for which the said employer was liable and complied with all the conditions of the Workmen's Compensation Insurance and Safety Act of 1917, and thereby became subrogated to all rights and duties of such employer and entitled to enforce such rights in its own name.

IX.

Alleges that by reason of the injuries so sustained by said John Sauder and said William Carlson on account of the carelessness and negligence of the petitioner, the said Aetna Life Insurance Company has necessarily expended up to the present time large sums of money for hospital services, nursing services, services of physicians and surgeons, for X-rays and for drugs furnished to said persons, all of which sums were reasonable expenditures therefor; that said Aetna Life Insurance Company is paying, and is liable to pay, further medical expenses, the amount of which cannot be determined at this time.

X.

Alleges that said Aetna Life Insurance Company, pursuant to said policies of workmen's compensation insurance and the said liability imposed by the said Workmen's Compensation Insurance and Safety Act of 1917, has paid said John Sauder and said William Carlson as compensation for disability from the date of said accident to the present time large

sums of money, and is still paying and liable to pay further compensation for the disability of said persons.

XI.

Alleges that pursuant to Section 26 of said Workmen's Compensation Insurance and Safety Act of 1917 of the State of California, claimant Aetna Life Insurance Company, a corporation, joins [32] in the above-entitled limitation proceeding as party claimant with claimant John Sauder and claimant William Carlson therein.

XII.

That by reason of the premises the said John Sauder and the said William Carlson have been damaged in large amounts, to the extent of a large proportion of which amount said Aetna Life Insurance Company has been and is damaged to date, and will be damaged to the extent of such further amounts as it is liable for to said John Sauder and said William Carlson for further compensation and medical expenditures; that said damages are the direct and proximate result of the carelessness and negligence of said petitioner, as herein alleged, and that no part of said damage has been paid, and the whole thereof is now due and owing from the petitioner to said John Sauder and said William Carlson respectively, and to said Aetna Life Insurance Company, and is wholly unpaid.

XIII.

Answering Article II of said libel and petition, denies that at the time of leaving Point Reyes the motorship "Three Sisters" was in all or any re-

spects properly manned or equipped, or was in all or any respects staunch or seaworthy.

XIV.

Answering Article III of said libel and petition, denies that said motorship on the alleged voyage encountered any long or ground swells, or that said motorship at said time proceeded during said voyage at half speed; admits that a tow-rope or bridle being used by said motorship as part of her apparel or equipment parted, and alleges that at said time said bridle and said tow-rope were in an unsound, rotten and defective condition; denies that said bridle or tow-rope parted or broke by reason of the alleged or any ground swells or otherwise than because of the unsound, rotten and defective condition of said tow-rope and said bridle, [33] and alleges that said tow-rope and bridle parted and broke because of said condition and by reason of being subjected to too great a strain for said bridle and tow-rope to bear in their said condition.

Denies that petitioner at the time alleged maintained a regular or other transportation service for persons by the motorship "Corona," and denies that said service was maintained for the accommodation of employees of Healy Tibbitts Construction Company, and denies that said "Three Sisters" was not used in said service.

Denies that said John Sauder or said William Carlson refused to await passage on the "Corona"; alleges that said Carlson and said Sauder were on said "Three Sisters" at the invitation and request

of the captain and master thereof, and as passengers thereon.

Denies that said Carlson or said Sauder signaled the master or captain of said "Three Sisters" that they desired to come aboard said vessel, or that her master on that account brought said vessel alongside of any barge; alleges, on the contrary, that said master or captain of said "Three Sisters" waited at Point Reyes for a period of about twenty-four hours for the purpose of having said Carlson and said Sauder come aboard said "Three Sisters" for the purpose of being transported as passengers thereon from Point Reyes to San Francisco at the invitation, request and demand of the master or captain of said vessel.

Denies that anyone at any time warned said Carlson or said Sauder to stay away from the stern of said vessel or from the tow-line which was attached to her mast.

Denies that said Carlson or said Sauder knew or could or should have known that the place upon said vessel at which they were stationed when said bridle or tow-line broke was at any time a place of danger to life or limb, or dangerous for anyone to remain in while said vessel was engaged in towing said barge; denies that in going to or in remaining at said place said Carlson or said Sauder failed to exercise ordinary care. Alleges that it was impracticable for them to occupy any other place on said "Three Sisters"; [34] denies that said Carlson and said Sauder failed to exercise ordinary care for their own safety or to conduct themselves as men of or-

dinary prudence would have done under the same circumstances; denies that a man or men or ordinary prudence would have remained away from said place under the same circumstances, or could or would have escaped injury from the breaking of said tow-line or bridle; alleges that said Carlson and said Sauder occupied and were upon the stern or after part of said "Three Sisters" under the direction of the master of said vessel.

XV.

Answering Article IV of said libel and petition, denies that the injuries suffered by said Carlson and said Sauder, or either of them, were not caused by fault on the part of said "Three Sisters," her master, officers and crew; denies that said injuries were occasioned solely or at all by any negligence on the part of said Carlson or said Sauder; denies that said Sauder or said Carlson were warned by the master of said vessel to keep away from the stern; denies that as prudent men they, or either of them, should have kept away from the stern, and alleges that they were on the stern part of said vessel under the direction of her master.

XVI.

Answering Article V of said libel and petition, denies that said accident happened or that the loss or damage alleged were done, occasioned or incurred without fault on the part of petitioner or without its privity and knowledge.

XVII.

Answering Article VI of said libel and petition, denies that the value of said motorship at the close

of said voyage did not exceed the sum of \$10,000; alleges that this claimant has no information or belief sufficient to enable it to answer concerning the freight pending at the close of said voyage, or the allegation [35] that the claims mentioned in said Article VI exceed the value of petitioner's interest in said vessel and her freight pending, and placing its denial upon that ground denies each and every one of said allegations in said Article VI and demands strict proof thereof.

XVIII.

Answering Article VII of said libel and petition, alleges that this claimant has no information or belief sufficient to enable it to answer concerning the allegations in said Article VIII, and placing its denial upon that ground denies each and every one of said allegations in said Article VII and demands strict proof thereof.

XIX.

Answering Article VIII of said libel and petition, alleges that this claimant has no information or belief sufficient to enable it to answer concerning the allegations in said Article VIII, and placing its denial upon that ground denies each and every one of said allegations in said Article VIII and demands strict proof thereof.

WHEREFORE said Aetna Life Insurance Company prays that this Honorable Court will be pleased to enter its decree adjudging that said petitioner, as well as said motorship "Three Sisters," her engines, boilers, boats, tackle, apparel, furniture and equipment, and her freight pending on the ter-

mination of her aforesaid voyage, together with all stipulations and stipulators substituted for said vessel and said freight pending, are liable for the claims of said Aetna Life Insurance Company filed in this proceeding with the Commissioner therein appointed by this Court, and decreeing payment thereof and that petitioner is not entitled to any limitation of liability and cannot limit its liability in [36] any manner whatsoever, and that said Aetna Life Insurance Company recover said claims, interest thereon, and its costs incurred herein, and for such other and further relief as may be meet and just in the premises.

REDMAN & ALEXANDER,
BELL & SIMMONS,

Proctors for Claimant Aetna Life Insurance Company.

State of California,
City of San Francisco,—ss.

J. R. Molony, being first duly sworn, deposes and says: That he is the manager of Aetna Life Insurance Company, a corporation, and as such is authorized to verify the foregoing answer on its behalf; that he has read the said answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

J. R. MOLONY,

Subscribed and sworn to before me this 26th day of May, A. D. 1924.

[Seal] JAMES MASON,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed May 27, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk.
[37]

In the District Court of the United States of
America, in and for the Northern District of
California, Third Division,

IN ADMIRALTY—No. 18,142.

In the Matter of the Petition of A. PALADINI,
INC., a Corporation, Owner of the Motor-
ship "Three Sisters" for Limitation of Li-
ability.

(DEPOSITION OF JOHN TRUE URQUHART.)

Direct Examination.

(By Mr. HEIDELBERG.)

Q. What is your name?

A. John True Urquhart.

Q. Where do you reside?

A. 133-37th St., Manhattan Beach.

Q. You are at present employed in Manhattan Beach at what?

A. Construction work, pile and bridge work.

Q. How long have you followed the occupation of pile-driving?

(Deposition of John True Urquhart.)

A. About fifteen years, not steadily.

Q. On June 8th, 1923, Mr. Urquhart, where were you?

A. I was coming home from Point Reyes to San Francisco. Drakes Bay is what it really is.

Q. For whom had you been employed at Point Reyes?

A. Healy Tibbitts Construction Company.

Q. With whom were you working at Point Reyes at that time?

A. William Carlson was foreman, Owen Haney was engineer and John Sauder, Scotty Evans and George Reed and others I just can't remember.

Q. Those were some of the men with whom you were employed? A. Yes. [38]

Q. How long had you been employed at Point Reyes before you left there on June 8th, 1923,?

A. Approximately one month.

Q. What boat did you take from San Francisco to Point Reyes the first time you were taken up there? A. The first time, the "Corona."

Q. Did you go up with William Carlson and John Sauder? A. Yes.

Q. Was there a barge taken up to Point Reyes at or about the same time your men went up there?

A. The pile-driver.

Q. Do you know what boat it was that towed the pile-driver to Point Reyes?

A. The "Three Sisters."

Q. Did you come back and forth to Point Reyes during the time you were employed there?

(Deposition of John True Urquhart.)

A. No.

Q. You remained there all that time?

A. Yes, I remained there all the time the job was going on.

Q. You do know, however, that the other men went back and forth on week-ends to San Francisco? A. Yes.

Q. Can you tell us on what boat the men would be taken back and forth from San Francisco and Point Reyes?

A. They went on the "Corona" once or twice and the "Three Sisters" on one or two occasions.

Q. You wouldn't care to say, would you, Mr. Urquhart, how many time the men went back and forth on the "Three Sisters" or back or forth on the "Corona"?

A. No. They went three or four times, possibly twice on each boat. Whatever boat happened to be there would take them down. [39]

Q. What day of the week, Mr. Urquhart, was it that you left Point Reyes at the completion of your work there to come to San Francisco, if you remember?

A. About the last of the week, on Friday, I think.

Q. How long before leaving Point Reyes had the "Three Sisters" been at anchor at Drakes Bay?

A. The night before or the afternoon before.

Q. Did you hear any conversation between Mr. Carlson and the captain of the "Three Sisters" when the "Three Sisters" arrived there prior to this Friday that you left? A. Yes.

(Deposition of John True Urquhart.)

Q. Who was present when that conversation took place?

A. All the crew was on the driver at that time. It is possible that anyone could hear it.

Q. At any event, you did hear a conversation between the captain of the "Three Sisters" and Mr. Carlson at that time and can you tell us, Mr. Urquhart, what that conversation was, to the best of your knowledge?

A. The captain asked Carlson when the job would be finished, as he was to stay and take the men and driver and all the equipment home when the job was finished.

Q. On this Friday that you left Point Reyes you, together with other members of your crew boarded the "Three Sisters" did you not? A. Yes.

Q. Did you, at any time, hear the captain tell any members of your crew that they were to come aboard the "Three Sisters"? A. No.

Q. Did he tell you any such thing?

A. No.

Q. Did you ever hear any conversation between the captain or any members of the crew or yourself on what part of the boat they were to remain?
[40]

A. I did not.

Q. Did you ever hear the captain of the "Three Sisters" warn or caution anyone on board that boat that they were not to remain in the rear or stern of that boat? A. I did not.

(Deposition of John True Urquhart.)

Q. How many men were on this boat at the time you left Point Reyes, approximately?

A. Seven; nine men including the captain.

Q. Did not the members of your crew and yourself have any luggage to take back to San Francisco? A. We did.

Q. Do you remember on what part of the "Three Sisters" that luggage was stored?

A. On top of the house.

Q. Do you remember whether or not any of the luggage was stowed on the side of the boat?

A. No. The passageway on each side of the house was cleared and the luggage and equipment was stowed on top of the house.

Q. How much deck room, if you remember, was forward of the pilot-house?

A. Very little forward, possibly about eight feet.

Q. Did you hear the captain say anything about whether the men were to stay on the front of the boat? A. I did not.

Q. Did you notice anything on your return trip as to whether or not the waters broke over the bow of the boat?

A. After getting under way there was quite a swell on and she was taking water; the spray was flying over the bow and you couldn't stay there without getting soaked.

Q. Did you hear the captain say anything to any member of the crew as to whether or not they should go below and stay below on [41] the "Three Sisters?" A. No.

(Deposition of John True Urquhart.)

Q. Mr. Urquhart, did you notice the bridle which was attached to the tow-line and from the tow-line to the barge? A. I did.

Q. And the "Three Sisters" when it was transporting you and the other members of this crew from Point Reyes to San Francisco was engaged, was it not, in transporting or towing this barge that you spoke of? A. It was.

Q. How was that barge being towed?

A. By the wire bridle which was fastened to the two corner bits on the barge.

Q. And was the tow-rope attached to this bridle?

A. Yes, it was shackled into the bridle.

Q. Did you notice the condition, Mr. Urquhart, of this bridle that was being used? A. I did.

Q. Just tell us what you noticed about the condition of this bridle?

A. The wire was quite rusty as if it had been used for a long time or been lying around like it was old. The swivel in the center where the tow-line shackled into was not in good working order.

Q. What was wrong with the swivel?

A. It was rusted fast or frozen so that it would not turn.

Q. Have you had any experience in the use of ropes and bridles during your occupation as a pile-driver?

A. I have been ship rigger and certainly made lots of bridles and lots of wire in my time.

Q. From your observations, Mr. Urquhart, was

(Deposition of John True Urquhart.)

or was not this [42] bridle a fit and proper bridle to be used in the condition that it was?

A. It was not to my idea.

Q. What effect, if any, Mr. Urquhart, was the fact that the swivel in the bridle being frozen or rusted have upon the likelihood of this bridle to break when being used for towing?

A. When the tow-line becomes taut the turns will run out of the rope and the swivel being frozen and rusted solid the turns would have to go into the wire as there is no place else for them to go; so the wire would lay up one part on the other like a rope.

Q. And would that condition have a tendency to cause the bridle to snap or break?

A. It certainly would, chafing up like that, the laying and unlaying would wear it out in a short time and weaken it so as to cause it to break.

Q. Did this bridle break when this barge was being towed on this voyage? A. Yes.

Q. Where were you when this happened?

A. I was in the galley.

Q. You did not see the accident at the very time it happened, did you? A. I did not.

Q. Did you subsequently come out of the galley?

A. George Reed called me and told me the tow-line was carried away and hit Carlson, and I run out.

Q. And then what did you see when you ran out?

A. I ran aft and saw Carlson and Sauder lying on deck both unconscious. [43]

(Deposition of John True Urquhart.)

Cross-examination.

(By Mr. LINGENFELTER.)

Q. When did you first observe the condition of the 'bridle upon the barge?

A. The first time when it was put on the barge to be towed to Point Reyes. The barge left Pier 46.

Q. Then the first time you observed the condition of this bridle was when you were aboard the barge at Pier 46 at the port of San Francisco before the barge was towed to Point Reyes where it was used in the pile-driving work in which you were engaged, was that true? A. That's right.

Q. And that was about one month you estimate, before the return voyage which occurred on the 8th day of June, 1923? A. It was.

Q. And you would say that at the first time that you examined this bridle that it was frozen in the swivel? A. It was.

Q. Rusted fast?

A. At the time we put it on at Pier 46 the two parts of the bridle spliced into the swivel was twisted up between two and three feet.

Q. Did I understand you to say that at the time you first observed this bridle at Pier 46 that the swivel of the bridle was so rusted and frozen that the swivel would not turn? A. Yes.

Q. That was the condition of the bridle at that time?

A. That was the condition of the bridle and before putting the eyes over the bit we took the

(Deposition of John True Urquhart.)

turns out of the wire so that both parts of the
bridle was clear. [44]

Q. But the swivel at that time was frozen?

A. It was.

Q. Where the sides of the bridle spliced into the
eyelets of the swivel, was the cable frozen to the
eyelets? A. No.

Q. Was the entire bridle in a rusted condition
on this occasion when you first observed it?

A. It was some rusted throughout.

Q. Did you observe any oil upon the bridle?

A. No.

Q. Did you observe any oil upon the swivel of
the bridle? A. Not a bit.

Q. Did you ever again observe the bridle after
this observation of it which you have just testified
to?

A. I helped put the bridle on the barge to be
towed from Point Reyes to San Francisco.

Q. You say the vessel was on the return voyage,
I mean the voyage of June 8, 1923, taking water
over the bow; you do not mean the bow of the
vessel was actually taking the sea by the bow?

A. Well, the vessel headway on rises and falls
and on that occasion there was quite a swell run-
ning and when she would dive into the swell the
spray would fly over the forward part of the ves-
sel.

Q. She was not, however, shipping any sea at
that time, was she?

A. Not very heavy; occasionally a dip.

(Deposition of John True Urquhart.)

Q. You never actually saw any of the sea come aboard on that voyage, did you? A. Oh, yes.

Q. Do you mean that the sea broke over the bow to your observation on that voyage?

A. Yes, I would say not very heavy; she was not laboring very heavy. [45]

Q. As a matter of fact, it was only the spray that was coming over the bow, wasn't it?

A. Well, as I said before, she was not shipping in heavy seas, that is, I mean that would wash you off your feet or anything like that.

Q. What I am endeavoring to get at is whether or not the vessel was shipping any sea by the bow as distinguished from spray breaking over the bow. Do you understand what I am endeavoring to get at?

A. Yes, I do, and I am answering that an occasional dip was taken and the water would run aft alongside of the house.

Q. And was this the condition of the sea at the time the accident occurred, I mean the accident in which Mr. Carlson and Mr. Sauder was injured?

A. It was.

Q. And at about that time the sea was breaking over the bow to such an extent that men standing at or in front of the wheel-house would be drenched by the water? A. Yes.

Q. Was the sea such at the time of the accident that men standing opposite the engine-house would be drenched by the sea?

A. Yes, they would get an occasional spray.

(Deposition of John True Urquhart.)

Q. Was the sea such at the time of the accident that men standing opposite the mast would be drenched by the water coming aboard ship?

A. No; that was about the only dry place that there was on it; that is, on deck, the spray would come over the bow halfway along the house as she would dip in and roll it would slop into the rails.

Q. How long before the accident that this condition of the sea prevailed—by that I mean the condition whereas you have testified the sea was breaking over the bow? [46]

A. As soon as we got out of Point Reyes and out of the bay she began to take ship sprays.

Q. How long was the “Three Sisters” out of port of Point Reyes before the accident happened?

A. From the time we started to tow, at least an hour and a half.

Q. How long had you been in the galley of the “Three Sisters” before the accident happened?

A. About fifteen or twenty minutes; I had had something to eat.

Q. You shaved yourself at that time?

A. I did.

Q. During the time you were in the galley were any of your coworkers there; by that I mean the other employees of Healy-Tibbits Construction Company of the company in which you were engaged were with you in the galley? A. Yes.

Q. How many, and who?

A. The cook; I don't know his name.

Q. Anyone else?

(Deposition of John True Urquhart.)

A. Scotty Evans relieved the captain for a few minutes while the captain went in the engine-room; he took the wheel.

Q. Scotty Evans did not come into the galley, did he,—he went into the wheel-house?

A. He went into the wheel-house but he came through the same door of the galley. The galley is just aft of the wheel-house.

Q. Was the companion-way to the forecastle opened or closed on the voyage of June 8, 1923?

A. It was closed entirely; all deck hatches were closed.

Q. Did any of the men who had been employed by Healy-Tibbitts Construction Company and who were aboard the "Three Sisters" on the voyage of June 8, 1923, get below into the forecastle? [47]

A. No, not to my knowledge. Pardon, may I suggest—as going into the hold getting off the deck the captain said there were fumes of gasoline in the hold and he would not allow any smoking down there. He didn't want us to go into the hold on that account.

Q. All the captain said to you about going below is that he would not permit smoking there, was that true? A. Yes.

Q. Then he never gave any instruction to the men aboard not to go into the forecastle, did he?

A. Not to my knowledge.

Q. Was there anything stowed on the deck of the "Three Sisters" forward of the wheel-house on the voyage of June 8, 1923?

(Deposition of John True Urquhart.)

A. I am not positive, but I think there was two water-casks.

Q. Of what contents were these casks?

A. Oh, about 300 gallons each.

Q. About 300 gallons each? Were they made of wood or metal? A. Wood.

Q. And how high were they?

A. About four feet six inches.

Q. And it is your recollection that both of these water-casks were stowed in the bow ahead of the wheel-house; is that correct?

A. I know they had been there but I am not positive if they were there on the return voyage as all our water used on the job had been brought from San Francisco in like barrels.

Q. Then you do not know whether or not these two casks were aboard on the voyage upon which Carlson and Sauder were injured?

A. I couldn't swear it if they were on the launch or the driver; I know we had some on the driver.

Q. Then it would be your present recollection that the bow of the "Three Sisters" was clear upon the return voyage? [48]

A. I am not positive that the casks were there, otherwise the deck would be clear.

Q. Do you ever remember of seeing these two water-casks stowed aboard the "Three Sisters" ahead of the wheel-house on any voyage?

A. I do.

Q. But you are not certain whether or not they

(Deposition of John True Urquhart.)

were in that position on the voyage of June 8, 1923? A. I am not.

Q. There are two fuel tanks upon the top of the engine-house of the "Three Sisters" immediately aft of the galley, are there not?

A. I am not positive of their location.

Q. You took aboard on the return voyage certain bedding, camp equipment and supplies, did you not? A. I did.

Q. And all of said camp equipment, bedding and supplies, I understand you to say, was stowed on top of the engine-house? A. Yes.

Q. Did you take any stoves on the "Three Sisters" on this return voyage?

A. Yes; one cook stove.

JOHN TRUE URQUHART. [49]

State of California,

County of Los Angeles,—ss.

I, Annie B. Myers, a notary public in and for the city of Los Angeles, county of Los Angeles, State of California, do hereby certify that John True Urquhart, the witness in the foregoing deposition named was by me duly sworn, and that said deposition was then taken at the time and place mentioned in the enclosed stipulation, to wit, office, 528 Marsh-Strong Building, in the city of Los Angeles, county of Los Angeles, State of California, on the 29th day of March, 1924, between the hours of 3:00 P. M. of that day; that said deposition was taken in shorthand and thereafter transcribed

by Julia Born, a competent and disinterested person, by me duly appointed and sworn for said purpose, and when completed was by me carefully read to said witness, and being by him corrected, was by him subscribed in my presence.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal at my office in the city of Los Angeles, County of Los Angeles, State of California, this 12th day of April, 1924.

[Notary's Seal] ANNIE B. MYERS,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Jan. 24, 1928.

[Endorsed]: Opened and filed August 12, 1924.
Walter B. Maling, Clerk. By J. A. Schaertzer,
Deputy Clerk. [49½]

In the Southern Division of the United States District Court in and for the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,142.

Before Hon. JOHN S. PARTRIDGE, Judge.

VOLUME 1.

In the Matter of the Petition of A. PALADINI, INC., a Corporation, Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

(TESTIMONY TAKEN IN OPEN COURT.)

Tuesday, August 5, 1924.

Counsel Appearing:

For the Petitioner: IRA S. LILLICK, Esq.,
and Messrs. HOEFLER, COOK & LIN-
GENFELTER.

For William Carlson and John Sauder, An-
swering Claimants: Messrs. HEIDEL-
BERG & MURASKY, and JOSEPH J.
McSHANE, Esq., and GOLDEN W.
BELL, Esq.

REPORTER'S TRANSCRIPT. [50]

Mr. LILLICK.—May it please the Court: This is a matter in which A. Paladini, Inc., a corporation, is seeking to limit its liability for the appraised value of a gasoline motor-boat called the "Three Sisters." An appraisal has been had. The Commissioner has fixed her value at \$15,918, for which a bond has been filed.

There are two issues that the Court will pass upon: 1. Whether we are entitled to limit our liability; and, 2, whether we are liable for the damages suffered by two men who were operating a pile-driver and who came back upon the "Three Sisters" from Point Reyes. Paladini, Inc., owned this gasoline motor-boat, the "Three Sisters," with three other gasoline motor-boats, which they operated at sea in bringing back the fish that were caught outside, and which at times were left at Point Reyes. The operation of the vessels was an

adjunct to their main business, the wholesaling and retailing of fish. In the course of their operations it became necessary, in their opinion, to build a pier at Point Reyes on Drake's Bay. A contract was entered into between them and the Healy-Tibbitts Construction Co., in which the Healy-Tibbitts Construction Co. were to drive the piers at this proposed site for the pier. The contract provided that a pile-driver belonging to the Healy-Tibbitts Construction Co. and put upon a barge known as barge 61 belong to the Crowley Launch & Towboat Co. was to be towed to and from Drake's Bay.

The COURT.—Towed by Paladini?

Mr. LILLICK.—Towed by Paladini. In that operation they used the "Three Sisters." The pile-driver was taken to Drake's Bay on the 10th of May, 1923. The work was expected to take about a month. The men who went up, workers for the Healy-Tibbitts Construction Co., and the equipment, stores, and [51] supplies, were to be taken up by the gasoline motor-boat "Corona," which during the 30 days called from day to day and took up stores and such necessary equipment as were needed to carry out the work at Drake's Bay.

At the completion of the work, in so far as the pile-driver was necessary, Healy-Tibbitts notified the main office that they were ready to return. Mr. Paladini, in charge of the main office, in turn notified his port engineer, who had charge of the vessels. In passing, I might say that the operation of these

four vessels, their equipment, such necessary repairs as had to be made upon them, and, in fact, the entire charge, custody and control of the vessels was under the particular supervision of the port engineer; the main office had nothing to do with that.

The port engineer, in turn, notified the captain of the "Three Sisters," which vessel had taken the pile-driver up, that he should go up to Drake's Bay and bring her back. He went up, and after waiting two days, because certain parts of the work apparently had not been completed, he started back with the pile-driver on the barge in tow. During the first portion of the back tow, the hawser between the "Three Sisters" and the barge, which was a 7-inch manila rope, and as to which I believe there will be no question as to its soundness, was attached to a bridle at the bow of the barge which had no rudder. That rope, when they first started, was approximately 50 feet long. When they got out into the commencement of the rough water, and just before they entered the rough water, at the buoy at Drake's Bay, the hawser was let out so that, as we believe, from 400 to 550 feet of the rope was let out. Certain of the equipment taken up by the men—their [52] beds, their bedding, other personal belongings of theirs—were put upon the "Three Sisters." When they started, the five men who came down with the boat and the tow, and who were employed by the Healy-Tibbitts Construction Co., started on the barge, but when the hawser was lengthened, just by the buoy, these men asked to

come on board the "Three Sisters." When they did so, the captain, who will be our first witness, told them not to stay at the stern, because of the danger of the hawser. Three of those men, after getting on board the "Three Sisters," went forward, and at the time of the accident were standing by the pilot-house, talking to Anderson, the deck-hand, and to Kruger, the captain. Two of the men were on the after end of the gasoline motor-boat, where they had been warned not to be, and under the hawser itself, practically, and were playing a game of cards.

The COURT.—Where was the capstan?

Mr. LILLICK.—The capstan, though they did not speak of it and will not speak of it as a capstan during the testimony, was a mast or a sampson post in the center forward portion of the after deck.

I think at this point it would be at least interesting to show something about the gasoline motor-boat. I have a chart here. This has been drawn to scale, as we will afterwards prove. In general form this is the vessel, the "Three Sisters." The capstan, about which your Honor asked, for it was substituted this center mast. The tow-line was attached to the center mast. In making the statement I have about the number of men, I have only spoken of five—there were more than five; there were perhaps eight or nine men, I mean employees of the Healy-Tibbitts Construction Co. Three of them were at the forward [53] portion of the house, on the fore deck, talking to Anderson, our deck-hand, and Kruger, the captain; the two men

who were injured were on the after deck, sitting below, or nearly below, the hawser, with two other men, playing a game of cards.

When they arrived at that portion of the entrance to the heavy water, the captain began to be concerned about the men, and warned them to move, but they paid no attention to him. Thereafter, one end of the bridle broke. Your Honor perhaps knows the manner in which a bridle is attached to a square-fronted barge; one end of the bridle is looped over a bitt or a post; the other end is looped over the other side, and then in the middle is a swivel with a hook, to which is attached the hawser. One side of this bridle broke; therefore, the other side broke—carried away—and the tautened line, suddenly giving away, whipped or in some way struck two of these men who were playing cards. It is the contention of the claimants that they were very badly injured. Suits were commenced in the State court. A petition for limitation was filed in this court and a temporary restraining order issued. The two men filed their claims in this proceeding. The suits commenced in the State court were for \$50,000 each. The men having received compensation under the Workmen's Compensation Act of this State were paid that compensation by the Aetna Life Insurance Co., which in turn also appeared in the case. We are met this morning with the contention of the Aetna Life Insurance Co. and the two men that we have no right to limit our liability, and that in addition to that we were responsible for the injuries suffered by them.

The COURT.—The Aetna was the insurer of the Healy-Tibbitts Co.? [54]

Mr. LILLICK.—Yes, your Honor, the Aetna was the insurer of the Healy-Tibbitts Co. I had intended to ask your Honor, before I began this statement, for an order of default as to all others interested and not appearing this morning. As I say, I intended to ask for the order before I commenced my opening statement, and I ask for that order now.

The COURT.—Very well.

Mr. BELL.—If your Honor please, I would like to make a very brief statement with respect to the issues which are involved here under the pleadings. Mr. Heidelberg is representing the two men who were injured, and I appear on behalf of the Aetna Life Insurance Company by reason of Section 26 of the Compensation Act, giving a lien to the employer or the employer's insured permitting him to join the action. In making the statement, I make it on behalf of both Mr. Heidelberg and myself.

The libel of the petitioner, or, rather, the petition filed by the petitioner states that it is engaged in the business of owning and operating ships in the Pacific Ocean and its inlets in pursuit of said corporation's general business, to wit, that of fishing, and is and at all of said times was the owner of the motorship "Three Sisters," which said motorship is now lying in the port of San Francisco, and within the jurisdiction of this Honorable Court.

That on the 8th day of June, 1923, said motorship left the port of Point Reyes, in the State of California, on a voyage, having in tow a barge bound for the port of San Francisco, in the State of California, where said voyage was terminated on the 8th day of June, 1923.

I simply read that paragraph in order to call to your Honor's [55] attention the short length of the voyage.

Paragraph III of the petition alleges that while on said voyage, and while towing said barge, in the morning of the 8th day of June, 1923, and while out of said port of Point Reyes about one hour and thirty minutes, and off the Coast of California, said motorship and her tow encountered a succession of long ground swells. Upon entering said ground swells the master of said motorship caused her to proceed on said voyage under half speed. The master was at the wheel. Suddenly, while said motorship was on the receding side of one of said ground swells, and while going at half speed, as aforesaid, the one side of the bridle upon said barge was seen by the master of said motorship to part. The master immediately thereafter, and before any further breaking of said bridle, disconnected the engines of said motorship from her propeller shaft, but, while not under any power from said motorship, but while being carried forward by the force of said ground swells and of the sea, the other side of said bridle upon said barge parted, completely disconnecting said motorship from her tow, and

that the end of that line, both sides of it having broken, flew back and struck two of these men.

It is alleged in the same paragraph, at a later point, that on encountering the ground swells as aforesaid, the master of the motorship warned these two men and the other two men engaged with them in a game of cards, to stay away from the stern of the vessel and from the tow-line, but that they did not do so.

Then, it is alleged that on the parting of the bridle from the barge it whipped back and struck the men.

I call your Honor's attention also particularly to paragraph [56] IV, which says:

“The said injuries to the said Carlson and the said Sauder were in nowise caused by fault on the part of said motorship ‘Three Sisters,’ her master, officers or crew, but were occasioned solely by reason of the negligence of said Carlson and said Sauder, in that they, the said Carlson and said Sauder, did not keep away from the stern of said motorship ‘Three Sisters,’ nor from said tow-line, as they were warned by the master of said motorship ‘Three Sisters’ to do, and as they, as prudent men, should have done.”

I call your Honor's attention to the fact that the sole defense, or, rather, the sole ground upon which it is desired to limit liability, is that these men were injured through their own negligence, and not through the negligence of the vessel or of her crew.

And, of course, with respect to the matter of privity, that the vessel was seaworthy, and whatever

fault may have existed, the Paladini Company was privy to it. However, there is no such defense as a peril of the sea, or anything of that sort.

So that we have here the fact that the accident occurred. There is no explanation of why the bridle broke. It simply broke. There is no allegation that there was any extraordinary weather, extraordinary sea, or anything of that kind.

I am now going to take the liberty of reading to your Honor just a paragraph or two which I think will tend to keep the issues clear in all of our minds, from an opinion by Judge Hand in the case of the S.S. "Hewitt," 284 Fed. 911. That was a case in which the petitioner was the owner of the steamer "Hewitt." They sought to limit liability. The respondent, [57] upon filing its claim and answer, attached a number of interrogatories to its answer, whose purpose was to answer whether or not the vessel was seaworthy or overloaded at the time of clearing from the port of Sabine, Texas, and whether her unseaworthiness was known to the petitioner. The exceptions were filed on the theory that the interrogatories pry into the petitioner's case.

Judge Hand said: "It is settled that interrogatories must be confined to evidence in support of the case of the side presenting them, and this is as true after the new admiralty rules as before. Therefore the question at bar turns upon whether or not the allegations of unseaworthiness and overloading in the respondents' answer are true defenses to the petition. This calls for some formal analysis of

proceedings for the limitation of a shipowner's liability under Revised Statutes, Secs. 4283-4285, and the fifty-first admiralty rule (267 Fed. xix).

"2. Such proceedings are theoretically in two distinct and successive parts, and, while for convenience the pleadings are in part consolidated, they are usually tried together, though that need not be done. It is of consequence to clearness of understanding that they should be kept apart in the minds of pleaders. The first step is to determine whether the owner is entitled to limit his liability at all; the second presupposes his success in the first, and determines how far he is liable to respond to the claimant to the extent of what he surrenders. On the first he has the burden of proving all the necessary allegations; on the second the claimant has it. All the owner need show is that he is an owner, that he or his ship has been sued for some 'act, matter or thing, loss, damage or forfeiture,' [58] and that his loss, if any, was 'done, occasioned or incurred without the privity or knowledge' of himself. When he does this, his right to limit is established, and this stage of the proceedings theoretically ends. The rest is merely to ascertain the proper distribution of what he has brought into court and surrendered.

"Preliminary even to this is the determination as to whether he has fulfilled the condition of his right by surrendering the vessel and her pending freight or by giving a stipulation of proper value. With that these exceptions are not concerned. Now, in undertaking to prove that the loss did not occur

with his privity, the owner must necessarily show either just how the loss did occur, or, if he cannot, he must exhaust all the possibilities, and show that as to each he was without privity. This, to be sure, he need not always do by going over the possibilities, item by item. No doubt it might be enough to show that to his knowledge the ship was well found, properly manned, and staunch, tight, and adequately equipped. I do not mean to suggest any necessary form of evidence. The relevant point is that he undertakes to prove that, whatever the cause of loss, he was ignorant of it; that burden he undertakes, with all the possibilities which it may involve.

“The respondent—not at this stage a claimant at all—has no burden of proof. All he need do is to break down the case made by the petitioner and he wins; the petition is dismissed, and he may sue the petitioner as and where he chooses.”

In other words, the pleading on the part of the respondent in such proceeding is to some extent formal. Under the Supreme Court admiralty rules, before a party is entitled to answer a petition for limitation of liability, he must file [59] his claim before the commissioner. All he does is to file the claim before the commissioner. That is spoken of as proving his claim. That is a condition precedent to answering. When he does answer there are two distinct issues; the first is as regards privity or knowledge of the owner as to what caused the loss, whatever it is to be attributed to. In connection

with that burden on the part of the owner, I call your Honor's attention to a case in 251 Fed. 214, the case of *In re Reichert Towing Line*, 251 Fed. 214:

“However, even in tort cases, where there is no contractual liability, one relying upon inevitable accident as a defense must either point out the precise cause, and show that he is in no way negligent in connection with it, or he must show all possible causes, and that he is not in fault in connection with any one of them. The presumption of fault the Reichert Company has not overcome, and therefore it must be held liable for negligence in the limitation proceeding, and liable primarily because of the unseaworthiness of its tug in the subsequent suit brought by the owner of the ‘Mathilde R.’”

So we contend here that on the pleadings—so far as the breaking of the bridle is concerned—a *prima facie* case has been established at the outset because there is no accounting for or an attempt to account for the breaking of the bridle. Therefore, it would seem that the only issue left in the case is whether or not these men were solely, themselves, the cause of their own injuries through their own negligence.

Mr. LILLICK.—Your Honor, I am somewhat at a loss to comprehend the point Mr. Bell has been seeking to cover. It would seem to me that he has said that because we have not used the phrase “perils of the sea” we are foreclosed from proving how [60] the accident happened and what occurred.

The COURT.—No, I don't think that, Mr. Lillick. I could not agree with that. I think you had better go ahead with your evidence.

Mr. LILLICK.—It was only for the purpose of having a statement from Mr. Bell as to whether he claims that the allegation of this petition, reading from page 2:

“But while not under any power from said motorship, but while being carried forward by the force of said ground swells and of the sea, the other side of said bridle upon said barge parted”—

is not a statement that because the disconnected engine of the motorship left her on the sliding edge of a ground swell, forcing her one way, and that the barge at the other end of the hawser upon a receding swell taking her the other way, and by the force of the sea parting the line. However, I think we need not take up any time in that type of discussion here, because the testimony certainly will be admissible and it will be for the Court to decide.

Mr. BELL.—My point is that there is no allegation of any extraordinary weather, or any peril of the sea, or any extraordinary sea, or anything of that kind.

Mr. LILLICK.—That was the part of it that was giving me concern, your Honor—the statement, now repeated by Mr. Bell, that we made no allegation that the loss was due to a peril of the sea. We did not call it a peril of the sea, but it was a loss that could only come from a venture that was involved in a peril of the sea.

The COURT.—Mr. Bell's point was, I think, that the allegations of the petition practically amount to an occurrence that ordinarily might be expected at sea, and, therefore, not a peril [61] of the sea.

Mr. LILLICK.—If that be Mr. Bell's point—I want to feel I am not going forward with any misapprehension as to what I might meet hereafter as to our pleading not being a sound pleading, your Honor.

The COURT.—Well, Mr. Lillick, you can put in your proof, and if you need to amend you can do so.

Mr. LILLICK.—That is what I had in mind, your Honor. I will call Captain Kruger. [62]

TESTIMONY OF CHARLES KRUGER, FOR PETITIONER.

CHARLES KRUGER, called for the petitioner, sworn.

Mr. LILLICK.—Q. What is your age?

A. 31.

Q. What is your occupation?

A. Launch operator.

Q. How long have you been a launch captain?

A. Since 1917.

Q. Prior to 1917, what was your occupation?

A. Launch operator since 1917.

Q. Before that, what did you do?

A. I was on yachts.

Q. In what capacity?

A. Some small boats and some large boats.

Q. Whereabouts? A. Sausalito.

Q. How long were you at Sausalito?

(Testimony of Charles Kruger.)

A. I have been there since 1902.

Q. From 1902, do you mean that you were there on small boats and on yachts?

A. No, sir, not all the time.

Q. For how many years were you on the water?

A. Practically since I was fourteen years old I have been on the water.

Q. What papers, if any, do you hold?

A. Launch operator's license.

Q. When was that given you?

A. I got them in 1917.

Q. Where are you now employed?

A. Down at San Pedro.

Q. With whom?

A. I am working for myself down there now.

Q. When did you commence work for Paladini?

A. In 1922, I think.

Q. In what? A. In 1922.

Q. In what position?

A. As launch operator.

Q. Who employed you? A. Alec Paladini.

Q. Who actually hired you, who actually told you to go to work?

A. I went down and saw the port engineer and he took me up to Alec Paladini.

Q. Who was that port engineer?

A. Mr. Carlton.

Q. When you went to work for Paladini, on what boat did you [63] first work?

A. On the "Three Sisters."

Q. From the time you first went to work until

(Testimony of Charles Kruger.)

the time of this accident, upon what vessel were you employed? A. On the "Three Sisters."

Q. So that continuously you were on her as her captain, were you? A. Yes, sir.

Q. What crew did you have on the "Three Sisters," that is, how many men?

A. There were always two men on board all the time.

Q. What do you mean by two men on board: Do you mean two men besides yourself, or you and one man? A. Me and one man.

Q. What were your duties on the boat?

A. I was master of the boat, and looked after the engines also.

Q. How big is the "Three Sisters," what are her dimensions?

A. She is 58 feet long, about 18 feet beam, I believe; I could not tell exactly.

Q. I call your attention to the tracing on the blackboard and ask you whether that is a correct diagram of the "Three Sisters"? A. Yes, sir.

Q. Prior to working on the "Three Sisters," what other vessels were you on as master?

A. I have been on the F. E. Booth & Co's. boats.

Q. Give us the names of those boats.

A. "Tano," "Junta," "California," and various other small boats.

Q. How did these gas boats of Booth & Co. compare in size with the "Three Sisters"?

A. They are pretty nearly practically the same size, except that one of them is larger, the "Junta."

(Testimony of Charles Kruger.)

Q. Where did they operate when you were operating them? A. Out of San Francisco, fishing.

Q. Where did they go?

A. Out to the Farallones, sometimes, sometimes to Point Reyes. [64]

Q. How many times a week would you go out on those boats?

A. Every day except Saturday.

Q. What acquaintance have you with the waters about Drake's Bay, up near Point Reyes?

A. I have been going in and out of there quite a bit.

Q. "Quite a bit" doesn't mean anything; how many times a week, or how many times a year, approximately?

A. I might say about five days a week we came in and out of there.

Q. Over what period of time have you been going in and out of Drake's Bay?

A. Sometimes we leave at two o'clock in the morning, sometimes at three, according to where we are fishing.

Q. Over what period of years?

A. In the fall of the year most of the time, and also in the summer when we are carrying salmon.

Q. What year did you first go into Drake's Bay—was it 1915, 1916, or 1917, or what year was it?

A. It was 1917.

Q. Have you ever made any tows of other vessels to Drake's Bay prior to the tow on which these two men were injured?

(Testimony of Charles Kruger.)

A. I towed barges there every year, about twice, going out and coming in from San Francisco to Point Reyes, and from Point Reyes to Bodega.

Q. What kind of a barge?

A. The barge they use in the salmon season.

Q. What are the dimensions of the barge, how big was the barge?

A. I could not tell you how big they were, but they were pretty good sized barges.

Q. Do you remember approximately how large the barge was that you towed the pile-driver up on?

A. I couldn't tell you how big she was.

Q. How did she compare in size with the fishing or salmon barges you towed?

A. She was smaller. [65]

Q. In towing the salmon barges, what size hawser did you usually have?

A. From 6 to 7 inch hawser.

Q. Do you remember the approximate size of the hawser with which you towed the pile-driver up to Drake's Bay?

A. A seven-inch hawser.

Q. Do you remember the size of the hawser with which you started to tow her back?

A. The same hawser.

Q. Was that hawser larger or smaller than the hawser you had used in towing the salmon barges?

A. Larger.

Q. With the salmon barges, have they the square front that the barge on which the pile-driver was had? A. Yes.

(Testimony of Charles Kruger.)

Q. Were the salmon barges without a rudder?

A. Some of them had a skag rudder, and some of them didn't have a skag.

Q. Did you or did you not use a bridle with the salmon barges in towing them? A. Yes.

Q. In doing that work that you performed with the "Three Sisters," from whom did you receive your orders? A. From the port engineer.

Q. Who was the port engineer at the time you started up with the pile-driver?

A. Mr. Carlton.

Q. Who was the port engineer at Paladini's when you started back with the pile-driver?

A. Mr. Davis.

Q. How long had Mr. Carlton been working as port engineer prior to his leaving, if you know? Was it during all the time that you were there?

A. Yes.

Q. During all of that time that you worked for Paladini, from whom did you receive your instructions? A. From the port engineer.

Q. What contract, if any, did you have with the main office at which Mr. Alec Paladini was?

A. I always got my orders through the port engineer; we always got our orders from him. [66]

Q. Did you have anything to do with the main office? A. No, sir.

Q. In covering whatever repairs the "Three Sisters" needed during the time you were operating her, to whom did you go for the new equipment?

A. The port engineer.

(Testimony of Charles Kruger.)

Q. Who made inspections upon your vessel?

A. The port engineer.

Q. Did you have anything to do personally with the choosing of the hawser that you used on this occasion? A. No, sir.

Q. Where did you get it?

A. I got it from the port engineer.

Q. On the trip up, when you took the pile-driver up, what did you do about getting the hawser? Tell us how you got it aboard your boat.

A. We got it aboard from the wharf. The port engineer had it down on the wharf, and we put it on the boat.

Q. How did you hear you were going up to Point Reyes?

A. He gave us orders the evening before.

The COURT.—Q. Who did?

A. The port engineer.

Mr. LILLICK.—Q. What did he tell you?

A. He told me we had to leave early in the morning with the pile-driver for Port Reyes.

Q. Who was working with you as deck-hand at that time?

A. Pete Mirchini, the man I had down at Santa Cruz with me.

Q. Who was your deck-hand upon the trip down?

A. You mean with the pile-driver?

Q. Yes. A. H. B. Anderson.

Q. When you took the pile-driver up, will you tell us what you did the following morning about picking up the pile-driver, and how you got your

(Testimony of Charles Kruger.)

hawser, and how you got your bridle, if you did get one and put it on the pile-driver?

A. We had the bridle on board on the pile-driver already. We just went aboard and made our lines fast to it. [67]

The COURT.—Q. That is, the bridle was already rigged and fastened on the barge: Is that what you mean? A. Yes, sir.

Q. Who did that?

A. That was when we got it here at Pier 46.

Mr. LILLICK.—Q. You mean you got it from Pier 46? A. Yes, sir.

Q. Did you get it? A. Yes.

Q. I understood you a moment ago to say that when you went down there the bridle was already on the pile-driver? A. Yes.

The COURT.—Q. You mean you got the barge from Pier 46?

A. Yes; I got the barge from Pier 46, with the bridle aboard, and took it down to Pier 23. That was the day before.

Mr. LILLICK.—Q. Who gave you the bridle?

A. The bridle was aboard the barge.

Q. Do you know anything about where the bridle came from? A. I do not know.

Q. When you got down to the pile-driver, how many men were on her?

A. There were no men on board of her, with the exception of myself and the deck-hand.

Q. I am not talking about your trip up there.

(Testimony of Charles Kruger.)

A. There were only two of us aboard the boat at the time.

Q. When you went down to pick up the pile-driver, was she moored to a pier?

A. Down to Pier 46?

Q. Yes, down to Pier 46.

A. She was pulled out from the inside by another tug.

Q. And you took her from the other tug, did you? A. Yes, I lashed alongside of her.

Q. Now, will you tell us what you did about getting her out to sea and up to Drake's Bay?

A. That was the next day that we started up. We went alongside and put our lines aboard her and made fast to the bridle. [68]

Q. Who made fast to the bridle?

A. My deck-hand and myself; we put a bow-line on her.

Q. Where was the bridle at that time?

A. It was right over the bitts.

Q. Already fixed in the place which you used for the bridle when you actually took the tow up?

A. Yes, sir.

Q. Who tied on your hawser to the bridle?

A. The deck-hand and myself.

Q. At that time did you notice the shackle at the end of the bridle?

A. I did not; I didn't look at it; we just merely made fast to it and started out.

Q. Do you know from your tow whether at that time the shackle had a thimble attached?

(Testimony of Charles Kruger.)

A. Yes, I know she had a thimble in the shackle.

Q. Do you know whether or not at that time on your up trip that thimble was working?

A. You mean the swivel?

Q. Yes, the swivel.

A. It must have been working, because the bridle was working at all times, there were no turns in it.

Mr. HEIDELBERG.—I move to strike out that answer.

Mr. LILLICK.—It may go out.

Q. How do you know whether the swivel was working in the bridle on your up trip, if you do know that?

A. Well, if the swivel was not working, we would have had some turns in the bridle, but the bridle was clear.

Q. Were there any men on the pile-driver or on the barge beside the pile-driver on your up trip? A. No, sir.

Q. How long did it take you to make that trip?

A. I left here about four o'clock in the morning and got up there about five or six in the evening; it took me over nine hours to tow it up.

Q. On your own vessel at that time what men were there? [69] A. My deck-hand.

Q. On the up trip, how did the weather or the sea compare with the weather and the sea on your down trip upon which the accident happened?

A. We had a strong northwester to buck all the way up.

(Testimony of Charles Kruger.)

Q. How about the sea?

A. It was a choppy sea; half the time we could not see whether the barge was coming behind us, or not. The sea broke right clean over her. There was a pretty strong northwest wind blowing at the time we went up.

Q. How about the water on your own bow?

A. We were taking water over our bow ourselves.

Q. Was there any swell at that time going up?

A. There was a rough sea; the water was going clean over the bow.

Q. When you first started that morning, did you start towing up with only one gas-boat, the "Three Sisters"?

A. No, sir, the "Corona" was ahead of us.

Q. And towing with a single line attached to your bow? A. Yes.

Q. So that on the hawser which you used going up there was on one end the barge and the pile-driver, and on the other end the "Corona" ahead of you towing in tandem on the same line?

A. Yes, sir.

Q. Where did the "Corona" drop you?

A. At buoy No. 3, opposite of Point Bonita.

Q. Is that out beyond the Gate? A. Yes, sir.

Q. Do you know anything personally about the "Corona" and whether between the time when you went up with the pile-driver and when you brought her back the "Corona" went up to Point Reyes. to this pier?

(Testimony of Charles Kruger.)

A. You mean the same day I went up?

Q. No, I mean in the time between.

A. Yes, she has been going up and down every day. [70]

Q. So that from the time you went up with the pile-driver first and the time she was brought back by you, the "Corona" was running every day?

A. Yes, sir.

Q. What was she doing running in there, if you know? A. She went up for salmon.

Q. When she went up for salmon, do you know whether she went in to that pier at all?

A. Sometimes she carried lumber up there.

Q. Do you know whether she carried anything besides lumber? A. She carried passengers.

Q. Now, coming to the voyage back, will you tell us from whom you received your instructions about going up to get the pile-driver?

A. The port engineer.

Q. About when was that?

A. I know I got the orders the night before, and I left in the morning to go up.

Q. You don't remember what date?

A. I do not remember, no, sir.

Q. What did the port engineer tell you?

A. He told me to go up and get the pile-driver and bring it down—the barge.

Q. When you went up, what equipment did you have on the "Three Sisters" for the tow?

A. The tow-line and the bridle.

Q. Were they or were they not the same tow-line

(Testimony of Charles Kruger.)

and bridle that you had used when you took the pile-driver up? A. Yes, sir.

The COURT.—Q. To whom did the pile-driver belong—did it belong to the barge? A. Yes, sir.

Q. How did you happen to have it down here? Did you bring it back with you and keep it on board? A. Yes, sir.

Mr. LILLICK.—Q. It was kept on board the “Three Sisters” all of the time?

A. Yes, all of the time, after I took the barge up I came back and went down to Santa Cruz and I had that bridle aboard all of the time. [71]

Q. Where was it during the time it was on the “Three Sisters”?

A. Stored down in the hold.

Q. Was the hold during that time awash at all?

A. No, sir.

Q. Any water in it at all during that time?

A. No, sir, it was dry.

Q. Are you sure of that? A. Yes, sir.

Q. When you left, you say Mr. Davis told you to go up and get the pile-driver. I would like to have you tell us just what he said, and when he said it, and the words he used.

A. He told me the night before, “You have orders to go up and bring the pile-driver down, they are supposed to be done with the pile-driver up there, you bring the pile-driver down to San Francisco.”

Mr. BELL.—Did I understand you, Mr. Lillick, to say that this was Mr. Davis?

(Testimony of Charles Kruger.)

Mr. LILLICK.—Yes. Mr. Carlton was supplanted by Mr. Davis in the meantime.

Q. Did you hear anything from anybody at all about going up to Point Reyes, and anything about that trip, other than what Mr. Davis, the port engineer told you? Did you get any other instructions whatever? A. No, sir.

Mr. HEIDELBERG.—If your Honor please, I would like to ask a question now. I understand that the contention here is that Paladini was without knowledge of this, and that they are now seeking to show that the port engineer gave these instructions to this captain. Of course, under the rules in ordinary civil cases, all of this testimony would be inadmissible, because it is immaterial, irrelevant and incompetent, and is not binding on these defendants in any way, but I presume in this kind of proceeding it is permissible, and, therefore, I [72] have no objection.

The COURT.—Of course, the test is the presence and the knowledge of the owner of the vessel.

Mr. HEIDELBERG.—Yes, your Honor. It is not binding on the defendants in any manner at all.

The COURT.—It is binding on them to the extent that it bears on the question as to whether or not the owner of the boat is to be allowed to limit.

Mr. HEIDELBERG.—I just wanted to have it clear in my own mind.

The COURT.—That is all.

Mr. LILLICK.—Q. On your arrival at Point Reyes, what occurred?

(Testimony of Charles Kruger.)

A. I went up there and Mr. Carlson told me they were not ready with the pile-driver to come down.

Q. You say Mr. Carlson? A. Yes.

Q. Who was Mr. Carlson?

A. The foreman of the Healy-Tibbitts Construction Company at the time.

Mr. LILLICK.—Mr. Carlson, your Honor, is one of the claimants in this case, one of the men injured.

Q. What, if anything, did Mr. Carlson say to you about waiting?

A. He told me to wait until they were ready. I was up there three days before I came down.

Q. Do you know what they were doing in the meantime with the pile-driver?

A. Yes, they were using the pile-driver at the dock at the time.

Q. Did you communicate with the San Francisco office of Paladini & Co. during those three days?

A. No, sir. I sent word down by the "Corona" that we were not coming down, that we were waiting for the pile-driver.

Q. When did you see the "Corona" first after having arrived [73] and having learned that the pile-driver was not yet ready to go back?

A. She came up the same day I went up.

Q. What was she doing there?

A. She went up to see if there was any salmon to go back. She went back every day.

(Testimony of Charles Kruger.)

Q. Did you see her again before you came back with the pile-driver?

A. She was up there the day before. I started with the pile-driver about two o'clock, about three o'clock in the afternoon; I don't remember just exactly the time it was.

Q. Do you know whether the "Corona" went up or started up to Drake's Bay on the day you started back?

A. No, sir, I did not know whether she was coming up or not.

Q. But did you see her that day? A. Yes, sir.

Q. Where did you see her?

A. After we started from Point Reyes with the barge to come down.

Q. Was she coming up? A. Yes, sir.

The COURT.—Q. You passed her?

A. No, sir, she passed me. I was coming down. After the accident was the time we saw her.

Q. You were going in opposite directions?

A. Yes, sir.

Q. She was going up and you were coming down? A. I was coming down.

Mr. LILLICK.—Q. Do you know whether the "Corona" ever carried any equipment, or passengers, or men back and forth to that job?

Mr. HEIDELBERG.—That is objected to as immaterial, irrelevant and incompetent.

Mr. LILLICK.—It is material in this sense, your Honor: Our facts will develop a situation where your Honor will see that the men asked to

(Testimony of Charles Kruger.)

come back on the pile-driver instead of on the regular means provided for their transportation.

The COURT.—Objection overruled. [74]

A. She did.

Mr. LILLICK.—Q. On the day you started from Point Reyes, who gave you the instructions there to prepare to take the pile-driver down?

A. Mr. Carlson.

Q. What did he say to you?

A. He called me over and told me that they were done with the wharf and for me to go alongside. They picked up the anchors first. I was alongside. From the pile-driver I went to the F. E. Booth wharf and got their camping utensils there.

Q. Whose camping utensils do you refer to?

A. The men who were up there working, the pile-driver gang.

Q. Who asked you to do that?

A. Mr. Carlson.

Q. Before going up to Point Reyes, had you received any instructions from your port engineer, or from Paladini's to pick up these things?

Mr. BELL.—I object to that as leading.

Mr. LILLICK.—Withdraw the question.

Q. Before leaving San Francisco, had you or had you not received any instructions with reference to bringing back anything other than the pile-driver?

Mr. BELL.—The same objection.

A. No, sir.

Mr. LILLICK.—Q. When you went up to the

(Testimony of Charles Kruger.)

Booth pier to get these things, who went with you, if anyone? A. The men from the pile-driver.

Q. How many of them?

A. Nearly all of them.

Q. How many, in number, would you say?

A. I think there were seven men in number, all together.

Q. That is, they were on the "Three Sisters"?

A. Yes, and I went over and got their things for them.

Q. Who loaded the things on the "Three Sisters"? [75]

A. They loaded part of their stuff themselves, and we also helped them.

Q. What were they?

A. Bedding, iron cots, some provisions and a stove.

Q. Where were those placed on the "Three Sisters"? A. They were on the port side.

Q. Where was the bedding, the blankets and the mattresses?

A. The mattresses were put over the skylight of the engine-room.

Q. Will you step over to the chart, here, and indicate where they were. Just indicate on the diagram here where the iron cots were placed.

A. Right in here.

Q. We will call that X-1. Will you indicate where, other than that, upon the "Three Sisters," the rest of the equipment was placed, and tell us

(Testimony of Charles Kruger.)

as you point it out what it was and where it was placed.

A. The mattresses were piled on top of the skylight of the engine-room.

Q. Do you mean to indicate only the forward portion of it?

A. It is a small skylight; it would take about half the skylight to cover it.

Q. I will mark that X-2. Where was the stove placed? A. Back of the mattresses.

Q. On which side? A. On the port side.

Q. I will call that X-3. Anything else?

A. The stores were piled up along here.

Q. You mean on the port side of the pilot-house?

A. Yes.

Q. They were on the port deck, right alongside the pilot-house?

A. Yes, in the wing of the house.

Q. I will mark that X-4; did they fill that passageway completely? A. Yes, sir.

Q. In order to get to the forward deck, then, how would you get there from the after deck?

A. You had to go on the starboard [76] side.

Q. You said that the other equipment was placed there at X-4 on the port side: What was that other equipment?

A. Groceries and boxes, and pots and pans.

Q. What was there on the forward deck?

A. There was nothing on the forward deck.

Q. You are sure of that?

A. Yes; the forward deck was clear.

(Testimony of Charles Kruger.)

Q. What was there on the after deck?

A. There was some bedding, and the clothes of the men, and some suitcases on top here, and part of them were back here; the tent was back here also.

Q. The point marked here by the funnel, which I will connect with the part you have marked by the mast, I will call that X-5.

A. There were two tents there.

Q. What occupied the space aft of the mast and down to the rail? A. There was nothing there.

Q. Are you sure of that?

A. Nothing that I can remember.

Q. I call your attention to a dotted line apparently indicating a hatch in the after deck: What was that?

A. That is the way you go down to the hold of the boat.

Q. Was that open or closed on this occasion?

A. It was closed.

Q. Was there anything on top of that hatch?

A. Not that I know of.

The COURT.—We will be in recess until two o'clock.

(A recess was here taken until two P. M.) [77]

AFTERNOON SESSION.

CHARLES KRUGER, direct examination (re-summed).

Mr. LILLICK.—Q. Captain, when you went up alongside of Booth's wharf, to take off the bedding,

(Testimony of Charles Kruger.)

and the stove, and the other things that were loaded on the "Three Sisters," who decided where those various things would be put on the boat?

A. They just put them on as they got them.

Q. Did you have any part in ordering them to be placed one in one position on the boat and another in another? A. No, sir.

Q. Was there any room in the forecastle for the men? A. Yes, sir.

Q. And what with reference to the galley, was there anything in the galley?

A. There was a stove in there, but there was room in there also.

Q. How much room was there there?

A. For one or two men to sit in there.

Q. Where did you eat in the boat?

A. We ate any place.

Q. Was there room in the galley for a table?

A. No, sir.

Q. On the bow of the boat, how much space was there, approximately?

A. From the pilot-house clean to the bow of the boat.

The COURT.—Q. And how far was it from the pilot-house to the bow?

A. About ten or fifteen feet, I should judge.

Mr. LILLICK.—Q. And how was it as to the top of the house, was there any room there unoccupied by the mattresses and the bedding that were put up there?

(Testimony of Charles Kruger.)

A. Back of the hatch where I go down into the engine-room was clear.

The COURT.—Q. Room for how many men in the fore-castle?

A. At least four men could go in the fore-castle.

Mr. LILLICK.—Q. After you had loaded these stores and [78] provisions on board of the "Three Sisters," where did the boat go?

A. Alongside the pier.

Q. Were any men on the pile-driver, or on the barge on which the pile-driver was, at the time you came back? A. No, sir.

Q. Where were the men who finally got on the "Three Sisters"?

A. They came with us after they had their things on board and we went alongside the barge.

Q. And after you got alongside the barge, where did the men go?

A. They went on board the barge.

Q. How long did they stay on board the barge?

A. They stayed there until I started out with the tow.

Q. When you threw off your lines at the pier and started out, how was the "Three Sisters" made fast to the barge?

A. She was ahead of the barge.

Q. Where was the line attached?

A. To the starboard bitt. We fastened it with a short line.

Q. On the starboard bitt of what vessel?

A. The "Three Sisters."

(Testimony of Charles Kruger.)

Q. So that the hawser ran from the starboard bitt of the "Three Sisters" to what on the barge?

A. The bridle.

The COURT.—Q. Where are these bitts on the "Three Sisters"?

A. On the stern of the boat.

Q. Do you mean right at the stern?

A. Yes, close to the quadrant.

Mr. LILLICK.—Q. About how far from the stern of the boat were those two bitts, say from the rail?

A. Those two bitts were about a foot and a half away from the rail.

Q. Was there one on each side? A. Yes.

Q. When you came back to the barge and the pile-driver, before you made fast to tow out, where was the bridle?

A. Aboard the "Three Sisters." [79]

Q. Who took it off the "Three Sisters" and affixed it or attached it to the barge?

A. The men on the barge.

Q. How was it put on the barge?

A. Over the bitts.

Q. Similar bitts on each side of the bow of the barge? A. One on each side of the barge.

The COURT.—Q. Pretty close to port and starboard, were they? A. Yes, sir.

Mr. LILLICK.—Q. Were they made fast in any way except to slip the loop at the end of the bridle over the bitts on the barge?

A. No, sir, they slipped right over on the bitt.

Q. Was the hawser at that time when the bridle

(Testimony of Charles Kruger.)

was slipped over the bitts attached to the bridle.

A. Yes, sir.

Q. Had it been in the same position on that bridle at the time you left it when you brought the pile-driver and the barge up to Point Reyes? In other words, had they been taken apart?

A. Yes, sir, they were taken apart once before.

Q. When was it put together again?

A. At the time we went up to get the pile-driver.

Q. On the way up, or was it after you got there?

A. After we got up there.

Q. Was that done at the same time that the bridle was put on?

A. We made the barge fast ourselves with the line to the "Three Sisters."

Q. I am speaking of the fixing of the hawser at the end of the bridle, when was that done, and by whom?

A. That was between Anderson and I. We put a bow-line on it.

Q. Do you know from your examination of that at the time you tied the hawser on with that bow-knot whether the swivel was working or was not working?

A. I could not say, for I didn't look at it. [80]

Q. After you started out with the line, as you have explained you had it fixed to the barge, and on your way out for the first fifteen minutes or half an hour, where were the men who put their provisions on the "Three Sisters," were they on the barge or were they on the "Three Sisters"?

(Testimony of Charles Kruger.)

A. Mr. Carlson and the cook were on board the "Three Sisters," and the rest of the crew were on the pile-driver.

Q. How far did you proceed before you made any change in your hawser?

A. We went as far as the bell buoy outside Drake's Bay.

Q. How far was that from the place where you started with the barge?

A. It takes about 15 or 20 minutes running time to get out.

Q. In miles, how far would that be?

A. About a mile and a half or two miles, probably.

Q. How was the water between the bell buoy and the pier, smooth or otherwise? A. Yes, smooth.

Q. Why did you change your tow-line?

A. I started out with a short tow-line first, until the men got done on the barge, and when they got done Mr. Carlson said they were done on the barge. They were fixing their things on the barge.

Q. What did they have to fix on the barge?

A. To get everything tightened up so that in case it started to roll from one side to the other nothing would be lost overboard.

Q. What did they have on the barge?

A. They had some piles and some stuff that they used there.

Q. When you changed your hawser, what change did you make in it. A. We lengthened the line.

Q. To what length?

(Testimony of Charles Kruger.)

A. I should say between 450 to 500 feet, all we had on board, and part of it was on board yet.
[81]

Q. When you made that change in the line, where did the men on the barge go?

A. They came aboard after I lengthened the line out; they were aboard when I started to lengthen my line out.

Q. Did you ask them to come on board, or did they ask you whether they could come on board?

A. They were supposed to come down on the "Corona" that night, and—

Mr. HEIDELBERG.—Now, just a minute. We ask that that be stricken out, your Honor, that they were supposed to come down on the "Corona."

The COURT.—Yes, let that go out.

Mr. LILLICK.—Q. I am speaking of the time when they came on board the "Three Sisters," did you ask them to come on, or did they ask you to come on, or how did that happen?

A. They said they wanted to go down, and I said, "All right."

The COURT.—Q. All of these men except Carlson and the cook were on the barge, weren't they?

A. Yes.

Q. Then they came aboard the "Three Sisters," didn't they? A. Yes.

Q. Now, did they ask to come aboard, or did you ask them to come aboard?

A. They asked to come aboard. They told Mr.

(Testimony of Charles Kruger.)

Carlson they were finished on board the barge, and they wanted to come aboard the "Three Sisters."

Q. And did they come aboard? A. Yes, sir.

Q. After they came aboard, where did they go?

A. They were standing around on the deck.

Mr. LILLICK.—Q. When your tow got straightened out and you had the 450 or 500 feet of line out, and the tow actually commenced, was anything said on board about the after portion of the "Three Sisters"? A. Yes, sir. [82]

Q. What was said?

A. To keep clear of the tow-line.

Q. Who said that? A. I did.

Q. To whom did you say it?

A. To the men who were standing back aft.

Q. Where did they go, if they did move, after you told them that?

A. Three came up forward, and one was shaving in the galley, and the other four were playing cards aft.

Q. Where did the three men forward go? Did they go in front of the deck-house, or where did they go?

A. In front of the pilot-house.

Q. How long was it from that time until the accident?

A. About an hour and a half, I should judge; about an hour and a half after we were under way.

Q. What have you to say as to the condition of the sea during that hour and a half?

(Testimony of Charles Kruger.)

A. I was getting some ground swells and the further we got the bigger the ground swells got.

Q. What course were you steering from the time you straightened out the tow at the bell buoy up to the time of the accident?

A. East by south, half south.

Q. During that time from what direction were those ground swells coming?

A. Westerly swells.

Q. What was the first thing you know about anything happening?

A. I was standing in the pilot-house and Mr. Anderson, the deck-hand, was alongside of me; he was at the wheel, and I was looking out of the window of the pilot-house, just by the pilot-house control, and I seen the port side of the bridle break, and so I put the boat neutral, but the boat had so much force that the other side of the bridle broke. That is all I seen of the accident. I think Scotty said somebody got hurt. I went back there and I seen Mr. Sauder and Mr. Carlson unconscious. [83]

Q. You say you were standing alongside of what? A. The pilot-house control.

Q. What is the pilot-house control; will you explain it to us?

A. Yes; it is the control by which you can put the boat neutral and go ahead and back up.

Q. How is that attached to the engine? Is it attached by a lever or by a wheel?

(Testimony of Charles Kruger.)

A. It is a wheel, and the rod is under the floor in the engine-room; it runs up to the pilot-house.

Q. At the time you saw the bridle part, where were the three men whom you say had gone to the forward part of the "Three Sisters"?

A. They were standing right alongside the pilot-house talking to Mr. Anderson, who was standing at the wheel.

Q. On which side was the wheel?

A. The pilot-house control was on the port side.

Q. With the wheel in the center?

A. No, it is on one side.

Q. In other words, the wheel was on the starboard side and the pilot-house control was on the port side?

A. No, sir; the wheel that you steer with is in the center of the pilot-house, and the control is to one side.

Q. Were those three men at the starboard window or at the port window?

A. At the starboard window.

Q. Was that the position on the "Three Sisters" from which, had there been any sea breaking, the sea would have washed over?

A. There was no sea breaking.

Q. There was no sea breaking? A. No, sir.

Q. With the course that you were then steering, where did the swell strike the "Three Sisters," on which side or quarter, or in what manner?

A. About quarterly.

Q. Quarterly from which side?

(Testimony of Charles Kruger.)

A. Starboard side.

Q. Quarterly from the starboard side?

A. Yes, sir. [84]

The COURT.—Q. That is, it was a westerly swell? A. Yes, sir.

Q. You were coming south?

A. We were coming from the west and were going south.

Mr. LILLICK.—Q. During the time from the buoy to the point where the accident occurred, had you noticed whether the tow-line was in or out of the water between the barge and the “Three Sisters”?

A. Yes, sir.

Q. What was the situation?

A. When she was going ahead, part of the time the line would be in the water, and sometimes it would jump right out as it was running with the sea.

Q. What is the explanation, if you have any, of the reason for the bridle parting?

A. Well, the way I could explain it is the barge was at times swinging from one side to the other, and going with the sea, and sometimes my boat would go ahead, the “Three Sisters,” and jerk the line when it got between the seas and running with the sea.

Q. During any portion of the time from the buoy up to the accident, did you have occasion to change the speed of the “Three Sisters”? A. Yes, sir.

Q. What was the occasion, and what did you do about the speed?

(Testimony of Charles Kruger.)

A. When we got heavy into ground swells, I slowed down into half speed.

Q. How long had you been running at half speed prior to the accident?

A. Probably about half an hour or a little longer, I could not tell exactly.

Q. When the bridle broke, what did you do?

A. I got the boat neutral and the line out. I saw the "Corona" coming. So I asked the captain of the "Corona" if he could take the men ashore; he said he had some trouble with his pump. So then I said, "I will go ahead in with the men and you stand by the [85] barge." So I came in as fast as I could with the "Three Sisters."

Q. You say the "Corona" was coming out. Do you know where she was going?

A. To Point Reyes.

Q. For what purpose?

Mr. BELL.—That is objected to as calling for the conclusion of the witness.

Mr. LILLICK.—Q. If you know. Do you know what she was going there for? A. Yes, sir.

Q. What for?

A. To pick up salmon, to bring in the salmon from Point Reyes.

Q. For what purpose did they use the pier at Point Reyes?

A. That is the place they got the salmon.

Q. When you say the "Corona" was going to Point Reyes to get salmon, would she go to the pier and load from the pier?

(Testimony of Charles Kruger.)

A. No, sir. She was there alongside the barge. We had barge No. 16 at anchor, to which we brought the salmon, before the pier was built.

Q. Where was that barge with relation to the pier?

A. She was anchored about 400 or 500 yards out from the wharf.

Q. While the tow was proceeding, before the men were hurt, what clearance was there between the hawser and the men—say the tops of their heads, what would you say as to the distance?

A. Practically pretty even with the railing of the boat, the tow-line was.

Q. Would it be above their heads, or even with their heads? A. Below their heads.

The COURT.—Q. How far is the rail above the deck?

A. About 18 or 20 inches.

Q. How far up on the mast was the line fastened?

A. Right below the roof of the house [86]

Q. Referring to the diagram, what is that going up to the mast—is that a boom? A. Yes.

Q. Was the line fastened below that boom?

A. Yes.

Mr. LILLICK.—Q. How far was the line, itself, in inches, from the deck? How far was the line on the mast where it was made fast, from the deck, approximately?

A. That is pretty hard to explain; apparently about 18 inches, 18 or 20 inches from the deck the line was fastened to the mast.

(Testimony of Charles Kruger.)

Q. Now, going back to the position of the men and that line, the hawser, itself, fixed as it was to the mast, would be at a position where, looking aft? Can you tell us in what position with reference to the port and starboard side the hawser went down the center line of the vessel?

A. It would be in the center of the boat.

Q. It would be in the center of the boat?

A. Yes, sir.

Q. Now, as to the men, were they on the port side of that hawser, or on the starboard side of that hawser?

A. They were on the starboard side of the hawser.

Q. How far away from the hawser?

A. Three or four feet, probably.

Q. You have told us the "Three Sisters" was 18 feet beam; having that in mind, can you tell us about what the distance would be, in feet?

A. That was close to amidships and it tapers in there.

Q. There was space on the after deck, on each side of the hawser, was there? A. Yes.

Q. What, if anything, kept that hawser from swinging to the starboard side or the port side when the barge swerved or sheered—was there anything there?

A. Yes, there are two leads on that boat, leads for the rope. [87]

The COURT.—Q. They are built from the rail, are they?

A. Yes, sir, they are iron leads.

(Testimony of Charles Kruger.)

Q. In the rail, or, rather, on the rail?

A. Yes, sir.

Mr. LILLICK.—Q. How far apart are those two leads?

A. They are in line with the house; the line leads in straight from the gypsy-head at the side of the boat when you heave in the line.

Q. Give us the distance from the port lead to the starboard lead on the after rail.

A. I could not tell you exactly, but probably 10 or 12 feet.

Q. So that on the after end of the deck, there was a space within which that hawser or line could play affixed to the mast, as it was, of the distance you have expressed from lead to lead. Is that true?

A. Yes, sir.

Q. Did the men make any reply to you when you told them to keep clear of the line back there?

A. No, sir.

Q. Was that all that was said about that?

A. Yes, sir.

Q. Had they commenced to play cards at the time you told them to stay away from that place?

A. No, sir. That was when we started out first. They had coffee first, and after they had coffee they went back and played cards back there at the starboard bitt, as I remember it.

Q. Do you know at what time they went aft, after they had coffee? A. I could not tell you.

Q. So that when you told them to keep clear of the line, they went forward and had their coffee?

(Testimony of Charles Kruger.)

A. That was when we first started out, that is when I told them to keep clear of the lines aft.

Q. And where did you go then?

A. I went into the pilot-house then, at the time.

Q. From that time until the accident, did you come out of the [88] pilot-house again?

A. At the time of the accident?

Q. Yes. A. Yes.

Q. I mean from the time you told them to stay clear of the line and you went into the pilot-house, did you come out of the pilot-house again until the time of the accident? A. Oh, yes.

Q. For what purpose, and where did you go?

A. I went down to the engine-room.

Q. How did you get to the engine-room?

A. You have to go on deck and go around starboard and come down the after deck and down that hatch; it is right in between the decks.

Q. From the pilot-house to the hatch, you come around the starboard hatch alongside the pilot-house, do you?

A. Right alongside the house, yes.

Q. How long did you stay in the engine-room?

A. Just time enough to oil up.

Q. And then what did you do?

A. I went back to the pilot-house.

Q. Had the men commenced to play cards before you went down there? A. Yes.

Q. So they were playing cards as you went by?

A. Yes.

Q. Then did you go back to the pilot-house again?

(Testimony of Charles Kruger.)

A. Yes, sir.

Q. Did you come out again before the accident?

A. No, sir.

Q. During all that time did you ship any water, Captain? A. No, sir.

The COURT.—Q. Where was the wind?

A. Very light northwester. It was right astern of us. There was no choppy sea at all. There was just an ordinary heavy ground swell.

Mr. LILLICK.—Q. Have you ever had an accident of any character on board a vessel you were operating, until this one?

Mr. HEIDELBERG.—That is objected to as immaterial, irrelevant and incompetent. [89]

Mr. LILLICK.—I only wanted to show that the captain was qualified. I wanted to show that he had never had another accident, that he had been operating on motor-boats for the period of time he has testified, and that he has never had any accident. I just want to show it, your Honor, for whatever it may be worth. It may not be worth a great deal.

The COURT.—I do not think it is competent, Mr. Lillick; I will sustain the objection.

Mr. LILLICK.—Very well, your Honor.

Q. What experience, if any, had you with the "Three Sisters," or other similar motor-boats, in the way of towing?

A. All the towing I did was towing outside, barges back and forth to Point Reyes, and from

(Testimony of Charles Kruger.)

Point Reyes to Bodega. Sometimes I towed up the river.

Q. Have you ever performed any salvage service? A. Yes.

Q. When, and where, and what was it?

A. I think it was in 1920—no, it was in 1919. I was going out to meet a net boat, and while I was going out—

Q. What boat was that?

A. The "California." She was a boat about 58 feet long and 15 feet beam. She had a 75-horsepower engine in her. I got outside and I heard some whistles out there; so I got close to them, and when I got alongside the captain asked me if I could take a line, that he was sinking. That was the steam schooner "Coquille." I towed him into Drake's Bay and put him on the beach.

Q. Had you used this same hawser and bridle on any other occasion in towing? A. Yes, sir.

Q. When and for what tow?

A. I towed barge 16 up from pier 23 to Point Reyes, Drake's Bay.

Q. When?

A. That was right after the pile-driver had gone up there. [90]

A. How large a barge was barge 16?

A. Quite a good-sized barge.

Q. How does she compare in size with barge 61?

A. Oh, you could put the 61 inside of that barge.

Q. You could? A. Yes.

(Testimony of Charles Kruger.)

Q. What was the horsepower of the engine in the "Three Sisters"?

A. 135, Enterprise Diesel.

Mr. LILLICK.—That is all.

Cross-examination.

Mr. HEIDELBERG.—Q. You say you have a certificate or a master's license?

A. I have an operator's license.

Q. You have an operator's license?

A. Yes, sir.

Q. And that license merely authorizes you to operate a gasoline launch, doesn't it?

Mr. LILLICK.—Now, I object to that, your Honor, on the ground that the certificate is the best evidence. If there is to be any question about what it is, let us have the certificate, itself.

Mr. HEIDELBERG.—Yes, that is just exactly what we want. We want the certificate, itself. We will put the certificate in evidence. We call upon you to produce it.

Mr. LILLICK.—We will produce it to-morrow morning.

Mr. LINGENFELTER.—Mr. Dolan, of the Inspection Bureau, will testify to its existence if for any reason it cannot be produced.

Mr. BELL.—And at the same time I would like to demand the production of the broken hawser and the bridle, and also the certificate of inspection of the "Three Sisters."

Mr. LILLICK.—I am told this, Mr. Bell: I asked the same question, practically, about the

hawser and the bridle, and I was told that the first that they had heard of any chance of their being called upon to pay for any loss sustained was some [91] six months after the accident, and that in the meantime they had not gone into the matter with a lawyer, or with anyone else, and that the bridle and the hawser are as little known to us as they are to you. We know nothing about them. I am told that Mr. Lingenfelter tried to find out about them, but that they disappeared.

Mr. BELL.—Then I think that Paladini should account for what happened to them.

Mr. LILLICK.—All right, we will ask Mr. Paladini about them when he takes the stand.

The COURT.—Which inspection certificate is it you want, Mr. Bell?

Mr. BELL.—The inspection certificate issued by the inspectors for the “Three Sisters.”

The COURT.—Issued when?

Mr. BELL.—Issued immediately before this accident. I refer to the one she was operating under at the time that this accident occurred.

Mr. LILLICK.—We will produce it if we have it.

Mr. LINGENFELTER.—Under what act of Congress, Mr. Bell, do you maintain that that vessel should have been inspected?

Mr. BELL.—If she carried passengers she had to be inspected under Section 4493 of the Revised Statutes.

(Testimony of Charles Kruger.)

Mr. LINGENFELTER.—That only covers steam vessels, doesn't it?

Mr. BELL.—I think not. That act was amended in 1917.

The COURT.—Well, Mr. Bell wants the last inspection certificate before the accident. If you have not any, that, of course, settles that.

The WITNESS.—May I have a word with you, your Honor?

The COURT.—Yes. [92]

The WITNESS.—They are talking about inspection of fishing boats. Gasoline boats or Diesel boats under 65 feet are not inspected; steamboats are, but not these boats; we are not hired by passengers.

Mr. HEIDELBERG.—Well, we call for the certificate, whatever it may be.

Mr. LILLICK.—If we have any we will produce it. According to my understanding, it is unnecessary to have any inspection of a vessel of this size—just the same as with a yacht.

Mr. LINGENFELTER.—Mr. Davis, now the port engineer, is here, and we may be able to clear this matter up through him right now.

The COURT.—The best way is to find out whether you have a certificate, and if you have produce it; if you have not let us know about it tomorrow, and that will be the end of it.

Mr. HEIDELBERG.—Q. You say you were on the "Three Sisters" all the time you were working for Paladini? A. Yes, sir.

(Testimony of Charles Kruger.)

Q. And you say you consulted with the port engineer at various times? A. Yes, sir.

Q. Did these consultations take place in the presence of Mr. Alex Paladini sometimes?

A. No, sir.

Q. Did they take place in the office?

A. No, sir.

Q. Didn't you ever visit the office of Paladini & Co.?

A. At the end of the month when we got our money.

Q. That is the only time you would ever go around, to get your money? A. Yes, sir.

Q. And where would you see Mr. Carlton?

A. Down at the dock, down at Pier 23.

Q. And you also saw Mr. Davis down there?

A. Yes.

Q. He would be in there when you came in, and when you would go out?

A. Sometimes he would be there, and sometimes he [93] would not be there; it depended on what time we got in.

Q. Was he there at various times when you got in? A. Yes, sir.

Q. Was he there at the time when you had these men on board taking them over to Point Reyes?

A. No, sir.

The COURT.—Does the rule in regard to the presence of the owner apply to any time except the time when the tow is actually begun?

Mr. LILLICK.—Certainly not, your Honor. That is our contention.

The COURT.—My impression of it was that in limitation matters the high officers of the corporations or the owner must have been present at the time that the voyage actually started; it would make no difference whether arrangements were made at some other time, or not.

Mr. BELL.—I think, if your Honor please, that is considerably qualified by the decision of Judge Dooling in the “Santa Rosa,” where he allowed the matter to be gone into for a considerable period before.

The COURT.—Well, perhaps I had better take the testimony, because I am not very clear on it myself.

Mr. LILLICK.—I think, Mr. Bell, you are in error in respect to that, because I happened to be interested in the “Santa Rosa,” and the “Santa Rosa” went off on the point of the owners having privity through their having advised the captain what he should do, the captain having advised with the home office as to the operation of taking the passengers from the vessel to the shore.

The COURT.—That is a very different thing.

Mr. LILLICK.—That is a very different thing, yes, your Honor.

Mr. BELL.—I don't like to discuss the matter before the [94] witness now, your Honor, and I would prefer to take the testimony.

Mr. LILLICK.—All right, we have no objection.

(Testimony of Charles Kruger.)

The COURT.—Very well, go ahead.

Mr. HEIDELBERG.—Q. Who was the port captain when you first took the tow from Pier 46?

A. You mean the port engineer?

Q. The port engineer, yes. A. Mr. Carlton.

Q. Was Mr. Carlton down at Pier 46 when you took the tow? A. No, sir.

Q. Did Mr. Carlton furnish you with the tackle that you used there, the swivel and the bridle?

A. No, sir.

Q. You have testified, haven't you, that you came up to Pier 46 and found the barge there and found the bridle already on the barge? A. Yes, sir.

Mr. LILLICK.—I will ask that that answer go out, your Honor, I would rather, if this course of inquiry is to be pursued, have counsel frame his questions so that they will not start with, "You have testified, have you not," because if the testimony he has given is to be the guide, we should have the testimony read. I think counsel can frame his questions clearly enough along that line.

The COURT.—Don't you remember Prof. Wigmore's discussion of that question, Mr. Lillick? He says, after reviewing all the authorities, that it is proper enough to ask a witness, "Did you not testify so and so," or "Have you not testified so and so," basing it on one English case to the effect that witnesses who are deliberately falsifying will frequently forget between the morning and the afternoon.

Mr. LILLICK.—I withdraw the objection.

(Testimony of Charles Kruger.)

Mr. HEIDELBERG.—Q. So that that is the fact, isn't it, when you got to Pier 46 you found the barge there waiting for you with the bridle already attached? A. Yes, sir. [95]

Q. And you didn't make any investigation at that time of the swivel, did you? A. No, sir.

Q. You didn't know whether or not that swivel would work, did you? A. No, sir.

Q. And you don't know right now whether or not at that time or at any subsequent time that swivel was rusted so bad that it would not turn, do you? A. No, sir.

Q. Did you use that swivel and that bridle in between the time you took this barge this day to Point Reyes and the time you brought it back?

A. Yes, sir.

Q. And you used that, I believe, in towing barge No. 16 up there? A. Yes, sir.

Q. Barge No. 16 had no load on it, did it?

A. No, sir.

Q. Barge 61 did have a load on it, didn't it?

A. Yes, sir.

Q. Both going and coming?

A. Both going and coming, yes, sir.

Q. And what did that load consist of?

A. The pile-driver.

Q. And the donkey-engine?

A. Yes, the donkey-engine and a few spars aboard.

Q. And that same pile-driving outfit was on the barge when you brought it back? A. Yes, sir.

(Testimony of Charles Kruger.)

Q. Do you know whether or not at this time any water was in the hold of the barge?

A. I don't know, for I didn't look at the hold.

Q. Do you know in what condition the pump was on the barge?

A. I don't know anything about the pump on the barge; it was for the men who were on the barge to look after that.

Q. You don't know anything about it, yourself?

A. Yes, sir.

Q. You never made any investigation of it?

A. No, sir.

Q. You say that going up there the members of the crew consisted of yourself and one man?

A. Yes, sir.

Q. That was not the same man that you had on the voyage back, [96] was it? A. No, sir.

Q. How long had you had this man a member of the crew, the man you had on the voyage back?

A. He went down with me to Santa Cruz, and I was down there about fourteen days, running between Santa Cruz and Monterey.

Q. You had this same man at Santa Cruz for fourteen days, did you, prior to the time you came back?

A. Yes; after I took the barge up I went down and ran between Santa Cruz and Monterey.

Q. Is it not a fact you took this man up there one week prior to the time you brought them back?

A. Yes.

Q. And is it not a fact that you had a fight with

(Testimony of Charles Kruger.)

the deck-hand at that time and that it was not the same deck-hand you had at the time you came back?

Mr. LILLICK.—Now, we object to that as immaterial, irrelevant and incompetent. That cannot have anything to do with this matter.

The COURT.—What difference does that make, Mr. Heidelberg?

Mr. HEIDELBERG.—Well, I am simply trying to show the experience of the crew.

The COURT.—Well, I will allow it.

A. That was when I came back from Santa Cruz?

Mr. HEIDELBERG.—Q. Yes, it was when you came back from Santa Cruz, but it was the week prior to the time you brought the men back, wasn't it? A. Yes.

Q. And you did not have the same man coming back that you had the week before you took these men up, did you? A. I don't understand you.

Q. You took all of these pile-drivers up to Point Reyes just one week before the last time you brought them back, didn't you?

A. Maybe so, I can't remember it. [97]

Q. Getting down to dates, you brought them back on June 8, 1923, didn't you?

A. Maybe; I don't know.

Q. If you are told you brought them back on June 8, 1923, then you would say that it was about June 2d that you took them up there, wouldn't you? A. Yes.

Q. And when you took them up you took them up in the "Three Sisters," didn't you? A. Yes.

(Testimony of Charles Kruger.)

Q. As a matter of fact, you took them up there and brought them back at various times on the "Three Sisters," didn't you?

A. I couldn't remember how many times I took them up and brought them back.

Q. Don't you know you did it about three times?

A. Probably.

Q. Did you ever have any conversations with your port engineer as to whether you should take these men up or bring them back? A. No, sir.

Q. How is it you happened to meet those men on the morning of June 2, 1923, and take them up to Point Reyes?

A. The other boat was up there; there was no other boat to take them.

Q. Who gave you instructions to meet these men when you took them up to Point Reyes on or about June 2, 1923?

A. If the "Corona" was not down at the dock I was to take them up.

Q. Then you had a conversation with the port engineer in which he said to you that if the "Corona" was not in San Francisco on or about June 2, 1923, that you were to go there and take these men up to Point Reyes, didn't you?

A. Yes, if the other boat was not there.

Q. And did you have that same conversation with the port engineer at the other times you took these men up? A. No, sir.

Q. Then how did you happen to meet and take them up?

(Testimony of Charles Kruger.)

A. That would depend on what boat was up at Point Reyes, and [98] what other boat was down here, and if I was to bring the men down.

Q. Who told you to meet these men at any time in San Francisco and take them to Point Reyes?

A. I had no such orders.

Q. Then you just met them of your own volition?

A. It depends what boat was in port. If the "Corona" was out I was to take them up.

Q. You were to take them up? A. Yes, sir.

Q. You mean by that that you had orders from the port engineer to take them up?

A. Yes, if the other boat was out.

Q. And so it was at about three different times that you met these men in San Francisco and took them up to Point Reyes? A. Yes.

Q. And you took them on the "Three Sisters"?

A. Yes, sir.

Q. How many times did you bring them back?

A. I can't remember.

Q. Didn't you bring them back twice?

A. Maybe once and maybe twice.

Q. As a matter of fact, didn't you bring them back three times?

A. I cannot say as to that.

Q. Weren't you sent up there at various times by the port engineer to bring these men back on a Saturday?

A. It depends on what boat was in there.

Q. Then you did have your orders at various times from the port engineer of Paladini & Co. to go

(Testimony of Charles Kruger.)

up to Point Reyes and bring these men back to San Francisco?

A. Sure, if the other boat was not there and was away, I was supposed to bring them down.

Q. When you say you were supposed to bring them down, I understand you to mean you had positive instructions from the port engineer of Paladini's to that effect?

A. Yes, if the other boat was out.

Q. What instructions did you have when you left for Point Reyes on [99] or about the 6th day of June, 1923?

A. I had orders to go up and get the pile-driver.

Q. And you also had this standing order, did you not, that at any time the men were to go or were to come, and the "Corona" was not there, you were to bring them back? A. Not that I know of.

Q. That order had never been countermanded, had it? A. Not that I know of.

Q. Then how was it that you went up on the Saturday before to bring these men back?

A. Because the other boat was away.

Q. Then I still say that you had orders from the port engineer, did you not, that if at any time the "Corona" was not in San Francisco and the men wanted to go to Point Reyes, you were to take them on the "Three Sisters"? A. Yes, sir.

Q. And the same way, if at any time you were up at Point Reyes and the "Corona" was not there, and the men were to come back, you were to bring them back? A. Yes, sir.

(Testimony of Charles Kruger.)

Q. So it was that on June 8, 1923, you found yourself at Point Reyes, and these men were finished their work? A. Yes, sir.

Q. And you had this order still in existence that at any time you found yourself at Point Reyes, or found yourself at San Francisco, and the men were to come back or forth, that you were to bring them on the "Three Sisters"?

A. Well, I went up there to get the pile-driver.

Q. And you still had this order in effect, had you not? A. No, sir.

Mr. LILLICK.—I object to that, your Honor; I think the witness has explained the matter.

The COURT.—I think he has made it clear, Mr. Heidelberg. He does not get this question, but he has said that his general orders were to get these men when the other boat was not here.

Mr. HEIDELBERG.—Q. You say you towed salmon barges at [100] various times?

A. Yes, sir.

Q. Outside towing? A. Yes, sir.

Q. And you said you used a swivel at all times you towed outside?

A. No, sir, not all the time.

Q. Didn't you so testify?

A. I didn't give that testimony, no, sir.

Mr. LINGENFELTER.—Do you mean a bridle or a swivel?

Mr. HEIDELBERG.—I mean a swivel. They always use a bridle.

(Testimony of Charles Kruger.)

A. (Continuing.) You always have a swivel on a bridle.

Q. You don't always use what they call a thimble, do you?

A. Yes, you have to have a thimble to put your rope on the bridle; if you don't, the swivel will cut the rope.

Q. You say the swivel will cut the rope?

A. Yes; there has to be a thimble in the shape of a "V" to keep the line in place.

Q. You say there has to be a swivel all the time?

A. A thimble.

Q. Then you say that you did use a swivel all the time when you used a bridle?

A. Yes, if you have a bridle you have to have a swivel.

Q. And you always used that outside? A. Yes.

Q. And you think that is the proper way to tow a barge from Point Reyes to San Francisco?

A. Yes.

Q. That has been your experience? A. Yes.

Q. And that has always been your experience in towing from Point Reyes to San Francisco, has it, you always use a swivel? A. Yes.

Q. When you went up there on the voyage on about May 10, I think it was, you say at that time you were bucking a head sea all the time?

A. Yes, sir.

Q. How much rope did you have out at that time?

A. All the tow-line I had.

Q. All the tow-line you had? A. Yes, sir.

(Testimony of Charles Kruger.)

Q. And you said that was from 450 to 500 feet?

A. Yes. [101]

Q. And that was all the tow-line you had?

A. Yes, sir.

Q. And you testified you had 450 feet of rope out coming back, did you not? A. Yes, sir.

Q. And that was all the rope that you had?

A. We had some more on board, yes.

Q. You had quite a coil above the hatch, didn't you? A. No, sir, not above the hatch.

Q. Where was it on the "Three Sisters"?

A. It goes close to the hatch.

Q. It was coiled around the mast, wasn't it?

A. Yes, sir.

Q. How high was that coil of rope you had?

A. I could not testify how high it was.

Q. As a matter of fact, it was about a foot and a half high by about four feet in circumference, wasn't it?

A. I just want to get this straightened out now; when I first started with the tow I had a 50-foot line out to start with, because the men were aboard the barge; when they told me they were ready on the barge I stopped and backed up and the men came aboard, and then I paid out all the line I had afterwards, and a small coil of rope was left behind there, but I could not tell how much rope it was.

Q. As a matter of fact, you had the body of the rope attached to the mast? A. Yes.

Q. And you had the rest of the rope on the deck?

A. There was not very much rope left.

(Testimony of Charles Kruger.)

Q. Wouldn't you say that the coil that you had there was about a foot and a half high?

A. Where did I say that?

Q. I say, wouldn't you say that?

A. I could not say that, I could not testify to that.

Q. Don't you remember that after Mr. Carlson was injured, they sat him on this coil of rope?

A. Why, certainly they sat [102] him on the coil of rope after we had the tow-line on board.

Q. No; don't you remember, as a matter of fact, that they sat him on this coil of rope that had not been touched?

A. No, sir; it was the tow-line we coiled in.

Q. When did you coil that in—before you took care of Mr. Carlson at all, was it?

A. After we broke the bridle they coiled the rope on top of the hatch, and the men took the injured men and put them on the mattresses that was on top, there.

Q. Is it not a fact that the first thing you did for Carlson was to sit him on the coil of rope, and that the next thing you did was to get the mattresses out and lay him on the mattresses?

A. That is the coil of rope we were towing.

Q. Wasn't it after that that you pulled the rope in from the tow?

A. No, sir; that coil of rope that was on top of the hatch was the one we pulled in.

Q. When you pulled the rope in it had the bridle attached to it? A. Part of the bridle.

(Testimony of Charles Kruger.)

Q. And it had the swivel attached to it, didn't it?

A. Yes.

Q. And you say that at the time you were towing, and at the time this rope snapped, there were about 450 feet of rope out? A. Yes, sir.

Q. How long was the bridle?

A. About 30 feet on both sides; I believe that is what the bridles are.

Q. Then you mean to say that the barge was 475 feet away from the "Three Sisters"?

A. Yes, just about that.

Q. As a matter of fact, wasn't the whole distance and the extreme distance that that barge was ever away from the "Three Sisters," that it did not exceed 200 feet? A. No, sir.

Q. As a matter of fact, didn't you have out about 150 feet of rope and about 25-foot bridle?

A. 150 feet of rope, you say? [103]

Q. Yes. A. No, sir.

Q. You never touched that rope after the first time you passed the bell buoy, did you?

A. Yes, sir.

Q. When was it you touched it again?

A. After we passed the bell buoy I stopped the boat and picked up the men from the barge and got them aboard the "Three Sisters," and then I put the rest of the line I had on board out.

Q. That is just what I asked you. You never touched it after that time, at all, did you?

A. No, sir.

(Testimony of Charles Kruger.)

Q. All the rope that you let out you let out at one time after you passed the bell buoy? A. Yes.

Q. And you never touched it after that, did you?

A. No, sir.

Q. And the same thing about the speed of the engine? A. Yes.

Q. You have no place to look out from that pilot-house, have you?

A. Yes, there is a window in back of the pilot-house right over the galley.

Q. Is there a window in back of the wheel-house?

A. Yes, that is the same thing.

Q. As a matter of fact, are not the windows on the side of the wheel-house?

A. And also on top of the galley. You can see from the pilot-house and from the galley right clean to the stern of the boat.

Q. Did you manipulate this engine at any time, with the exception of the time you went down into the hold and oiled her up?

A. Yes, when I seen we were getting ground swells I slowed down to half speed.

Q. Didn't you go down in the hold and oil the engine? A. Yes.

Q. And didn't you come up and then throw her full speed ahead? A. No, sir.

Q. And didn't you walk back to the men who were playing cards [104] at the back of this boat and say, "What do you think of it now? I have her going full speed"?

A. Not that I can remember.

(Testimony of Charles Kruger.)

Q. Don't you remember saying to Mr. Carlson particularly, "What do you think of this now? I have her going full speed"?

A. I cannot remember, sir. That is over a year ago.

Q. You do remember saying something to Mr. Carlson about full speed, don't you?

A. I could not testify to that.

Q. Did you manipulate this engine as to speed at various times, according to the tow of the barge?

A. I slowed down to half speed, yes.

Q. And you left her going at one steady speed, either full speed or half speed, didn't you?

A. I couldn't run that engine full speed. The engine was only in the boat about two months, and I had orders not to run her full speed—call it three-quarters speed.

Q. What I am asking you is this: You either had the boat going full speed, or three-quarters speed, as you say, or you had it slowed down; in other words, your boat was maintaining a steady speed, whatever it was? A. Yes, sir.

The COURT.—Q. How do you regulate that?

A. From the pilot-house. It runs under governors.

Mr. HEIDELBERG.—Q. And you never slackened or increased the speed of the engine to take up the slack in the tow-rope, did you?

A. No, sir.

Q. You don't do that when you tow, do you?

A. No, sir.

(Testimony of Charles Kruger.)

Q. That is not your practice? A. No, sir.

Q. Your experience does not say that that is necessary? A. No, sir.

Q. When you got through at Point Reyes, who was the first person you spoke to?

A. Mr. Carlson.

Q. Where were you when you spoke to Mr. Carlson? A. Right [105] alongside the barge.

Q. Who was with Mr. Carlson at that time?

A. I could not remember who was with him; the men were with him.

Q. All the men were clustered around Mr. Carlson, were they? A. Yes, sir.

Q. And at that time didn't you holler out to Mr. Carlson, "When are you going to be through over here"?

A. Yes, "When are you going to be through with the pile-driver?"

Q. And didn't you then say to him that you had orders from Paladini to wait and bring them back?

A. No, sir, I cannot testify to that. My orders were to go up and get the pile-driver. That is all I had to do, to bring the pile-driver down. They were supposed to be finished on the dock.

Q. I am not asking you about the pile-driver. I am asking you about a conversation you had with Mr. Carlson. At the time you were standing on board your boat, and at the time that Mr. Carlson and the various other men were alongside, I am asking you if at that time you did not say to Mr. Carlson, at Point Reyes, on or about June 6th, in the

(Testimony of Charles Kruger.)

presence of these other men who were with him at that time, that you had orders from Paladini to wait for them and bring them back? I am asking you for a conversation, and not for orders.

A. As I remember it, I told him I am up to get the barge.

Q. Did you say "barge," and nothing else?

A. I either called it the barge or the pile-driver; the pile-driver was on it; I might have called it the pile-driver.

Q. You didn't say to them that you had orders from Paladini— A. I never did.

Q. Just a minute. I am quoting your exact conversation as it has been reported to me. You did not say to them that you had orders from Paladini to wait and bring them back? [106]

A. I cannot say that I ever had orders from Mr. Paladini, because I got my orders from the port engineer.

The COURT.—Q. He is not asking you that. He says did you tell Carlson that you had orders from Paladini?

A. I told him I had orders to go up and get the barge, yes.

Q. That does not quite answer the question. Did you tell Carlson that you had orders from Paladini to come?

A. I could not remember that, for I got my orders from the port engineer.

Mr. LILLICK.—If your Honor please, by consent of opposing counsel, and if the Court has no

(Testimony of Charles C. Horten.)

objection, we want to withdraw Mr. Kruger and put on a witness who is quite anxious to get away.

The COURT.—Very well.

TESTIMONY OF CHARLES C. HORTEN, FOR
PETITIONER.

CHARLES C. HORTEN, called for the petitioner, sworn.

Mr. LILLICK.—Q. Mr. Horten, in 1923, what was your occupation?

A. Vice-president of the Healy-Tibbitts Construction Co.

Q. As such vice-president of the Healy-Tibbitts Construction Co., will you tell the Court what was done about the construction of the pier for the Paladini people up at Point Reyes?

A. We entered into an agreement with the A. Paladini Co. to construct a pier at Point Reyes. The negotiations were made through Mr. Del Savaro.

Q. Who was he?

A. He was the Paladini representative with whom we had all of our dealings up to the time of signing the contract. During the preliminary discussions it was understood that the materials would be transported by the Paladini Company. Our original agreement covered this transportation to be done by the Paladini boats. When the materials were assembled and [107] the piles were in rafts alongside the dock, it was decided it would be best to secure a barge and load all the materials upon

(Testimony of Charles C. Horten.)

a barge, and deliver them to Point Reyes by that method. After a consultation in our office with Mr. Del Savaro it was suggested that we would secure a barge from Crowley, which we did, for the account of Paladini; this barge was loaded with all of the materials and in due time towed by the Paladini Company to the site of the wharf and discharged.

Q. Now, as to the bridle, will you tell us how that bridle was secured?

A. During some of the discussions it was found that there was no bridle with the barge. Mr. Del Savaro came to our office and asked if we had any and we said we did not. It was through that discussion that our man, Mr. Brown, rang up the Crowley Launch & Tow Boat Co. and borrowed one and had it delivered down to the barge for the Paladini Co.

Q. After the venture was ready, what developed about bringing the men back and forth, or taking them up to the job and bringing them back?

A. It was more or less understood that the men would go up on the barge. I recall a conversation with Mr. Carlson in reference to returning to the city during week-ends. During one of those discussions with Mr. Carlson I told him that he could, if necessary, come back overland, by reaching the train at Point Reyes. During none of the discussions was the return of the men upon the completion of the work taken up. We were not thinking of how the men were going to get back, we were thinking of building the wharf at that time. So far as the

(Testimony of Charles C. Horten.)

final return of the men was concerned, there was nothing said.

Q. Who was Mr. Carlson?

A. He was the foreman in charge for Healy-Tibbits.

Q. He was your foreman on the job? A. Yes.

Q. Was anything agreed upon between A. Paladini, Inc., and the [108] Healy-Tibbits Construction Co. with reference to taking the men back and forth week-ends?

Mr. HEIDELBERG.—That is objected to as immaterial, irrelevant and incompetent, and as calling for the opinion of the witness.

The COURT.—Objection overruled.

A. There was no discussion with Paladini regarding the return of the men week-ends.

Mr. LILLICK.—Q. What with reference to the men employed by you do you do where the jobs are out of town jobs, where they last for two weeks, or three weeks, or a month?

Mr. HEIDELBERG.—I object to that as immaterial, irrelevant and incompetent.

Mr. LILLICK.—I withdraw the question.

Q. When the job was started, what was the length of time which your contract called for for the completion of the pier in question?

A. I will have to refer to the contract. However, there was a subsequent contract that extended that time; the wharf was extended.

Mr. HEIDELBERG.—I really cannot see the materiality of this.

(Testimony of Charles C. Horten.)

Mr. LILLICK.—Well, if you will agree to stipulate to it, it is our contention, and we think the fact, that the Healy-Tibbitts Construction Co. had their men go up to this job, that they made no agreement whatever with A. Paladini, Inc., and we had no agreement under which we were to bring the men back and forth. If you are willing to stipulate to that, very well; otherwise we will prove it.

A. The original contract provided that the work be finished within 60 working days.

Q. Now, as to the contract with reference to taking your men up to the job and bringing them back, did you have any agreement [109] with A. Paladini, Inc., covering that?

A. There was nothing said regarding the transportation of the men.

The COURT.—Q. How far is Drake's Bay from the station at Point Reyes?

A. It is quite an automobile ride to the station, Judge.

Q. 14 or 15 miles?

A. Yes, I would say so.

Mr. LILLICK.—Q. Do you remember having any conversation with your foreman with reference to the situation if any of the men desired to return to San Francisco for the week-ends during the work there, and how they could get back and forth?

A. That is as I have already testified. I remember telling Mr. Carlson it was possible for him to come overland to the train to Point Reyes and come down by rail.

(Testimony of Charles C. Horten.)

Q. How about his men?

A. That referred to the men, of course.

Mr. LILLICK.—That is all.

Cross-examination.

Mr. HEIDELBERG.—Q. This Del Savaro you speak of is an Italian contractor here in town, isn't he?

A. I only know him as the representative of A. Paladini.

Q. But you do know his business, don't you?

A. Yes, I have seen his card and I know he is a contractor.

Q. And he is the man who asked you to get the bridle for this barge for A. Paladini, Inc.,?

A. Yes.

Q. Do you know a Mr. Carlton? A. No.

Q. Do you know a Mr. Davis who was port engineer for Paladini?

A. No. I know one representative of Paladini, sitting right over there. That is the only man I have met.

Q. You never saw Mr. Davis or Mr. Carlton in regard to the securing of this swivel?

A. Not that I know of.

Q. You never had any conversation with them at all? [110] A. Not that I know of; no.

Q. Do you remember when you told Mr. Carlson that if the men wanted to return to the city they could go overland and take the train back, do you remember that Mr. Carlson said to you at that time

(Testimony of Charles C. Horten.)

that that was 15 or 16 miles over, and they didn't want to do it that way?

A. No, I don't remember that.

Q. When you say there was never any agreement with A. Paladini, Inc., as to bringing the men back, you are only speaking of your own personal knowledge, aren't you?

A. I did the negotiating with Paladini.

Q. As a matter of fact, you don't know anything about what Mr. Martin Brown might have said to Paladini, do you?

A. I don't think he ever met Paladini.

The COURT.—Q. Who is Mr. Brown?

A. He is one of our superintendents.

Mr. HEIDELBERG.—Q. You don't know that of your own knowledge, though, do you?

A. The negotiating was all done in my room, and when Mr. Brown was there I was there.

Q. How long have you known Mr. Del Savaro?

A. Just previous to the date of this agreement; that is the first time I ever saw him.

Q. You say you don't remember having any conversation with Mr. Carlson in which he raised a very strenuous objection to going overland and taking the train back?

A. I really don't recall it; he may have brought the question up, but I really don't recall it.

Q. How were the men to be taken up there, did you say?

A. Well, the men went up on the barge. Our material went along on the barge, and it was neces-

(Testimony of Charles C. Horten.)

sary for some men to go up with the material. I don't know how many went, but I know some of [111] them went up that way, perhaps all of them.

Q. As a matter of fact, don't you know that none of them went up that way? A. No, I don't.

Q. Don't you know that they went up on the "Corona," and that the "Three Sisters" subsequently towed the barge up there? A. No.

Q. You didn't have anything to do with making that arrangement, did you?

A. I guess that was up to Paladini.

Q. All you know is that they were to take the men and the material up there?

Mr. LILLICK.—That is objected to on the ground that that will be covered by the contract. We propose to put the contract in evidence. This last question I submit is objectionable on the ground that it has to do with the contract.

The COURT.—I think the witness previously testified that there was no arrangement for taking the men up there.

Mr. HEIDELBERG.—But he did testify, your Honor, that it was understood that the men were to be taken up there by Paladini at the same time that the materials were taken up there.

The COURT.—Q. Did you testify to that, Mr. Horten?

A. Yes, I think I did, Judge. Here is the situation in reference to the trip up: When we ship material out by barge, we always send some of our own men to look after the stuff, and it was under-

(Testimony of Charles C. Horten.)

stood that a sufficient number of these men would go along with that barge to protect our interests.

Mr. HEIDELBERG.—Q. You left that more or less to Paladini, didn't you?

A. No, that was done to protect the Healy-Tibbits equipment. That was our idea of having the men go up with the stuff.

Q. It would be news to you to find out that the men did not go up with the equipment at all, but went up on another boat [112] entirely, wouldn't it?

A. Well, they were right in touch with the other boat, though, weren't they?

Q. No, they left about five hours afterwards. That is all.

Redirect Examination

Mr. LILLICK.—Q. You don't know what the men might have done about asking whether they could get a ride on another boat going up there, do you? A. No, sir.

Q. And you had no contract with Paladini by which Paladini was to transport your men up there, had you?

A. There was no understanding at all about the men.

Q. And there was no payment made to Paladini, Inc., to cover taking your men either up or back, or for the week-ends?

A. No, sir, none whatever.

Q. I show you this contract between Paladini & Co., Inc., and the Healy-Tibbits Construction Co.,

(Testimony of Charles C. Horten.)

and ask you if that is the contract under which this work was done? A. Yes, that is it.

Mr. LILLICK.—We offer this in evidence and ask that it be marked “Petitioner’s Exhibit 1.”

(The document was here marked “Petitioner’s Exhibit 1.”)

Recross-examination.

Mr. HEIDELBERG.—Q. You don’t know about a conversation that Mr. Carlson had with Martin Brown in which he refused to go up or refused to take his men up that early in the morning the first day the barge went up, do you? You don’t know anything about that conversation, do you?

A. No, nothing, whatever.

Q. You would not say that it didn’t take place at all, would you? A. No.

Mr. HEIDELBERG.—That is all.

Mr. LILLICK.—Now, just a minute. We move to strike that out, your Honor, because it has nothing to do with the contract, or with what Paladini & Co. might have done in the matter. [113]

The COURT.—But he says he knows nothing about it, Mr. Lillick. It cannot do any harm.

Mr. LILLICK.—Q. Mr. Martin Brown is your foreman?

A. Our superintendent.

Q. Has he any authority to bind Healy-Tibbitts & Co. in a contract of this character?

A. Not in a contract, no, but he could make an arrangement as to how the men should go back and forth; that would be within his duty.

(Testimony of Charles Kruger.)

Q. And pay for it?

A. No, he cannot agree to pay out any money.

TESTIMONY OF CHARLES KRUGER, FOR
PETITIONER (RECALLED).

CHARLES KRUGER, cross-examination (re-
sumed).

Mr. HEIDELBERG.—Q. Captain, while we are on this matter of conversation, I will ask you what conversation you had with Mr. Carlson while he was staying in the back of that boat coming from Point Reyes? A. I cannot say.

Q. You had some conversation with him, though, didn't you? A. I don't know.

Q. When was it you told him to stay clear of that line? A. When we first started out.

Q. Was that before or after you went back and cleaned some fish for Mr. Carlson?

A. Cleaned some fish?

Q. Yes. A. I don't remember that.

Q. You don't remember cleaning some fish for Mr. Carlson back there? A. No, sir.

Q. And you don't remember having a conversation with him and showing him how to clean fish, and telling him that you were an expert at it?

A. I don't remember that.

Mr. LILLICK.—What is the materiality of this, Mr. Heidelberg?

Mr. HEIDELBERG.—I am just going to show that he never had any such conversation with him, about keeping clear of any line, [114] and that,

(Testimony of Charles Kruger.)

as a matter of fact, he went back there and sat down with them.

A. (Continuing.) I never sat down with them.

Q. As a matter of fact, you did clean some fish for Mr. Carlson, didn't you? A. I cannot say.

Q. You say you told them to stay clear of that line when you first started out: Is that correct?

A. Yes, sir.

Q. Why did you tell them that?

A. Any man with any common sense would not stay underneath the tow-line.

Q. You were the captain on that boat, weren't you? A. Yes.

Q. And you could tell them to go wherever you pleased, couldn't you? A. Yes.

Q. And you could make them do it, couldn't you?

A. Yes.

Q. But you didn't do it, you let them stay right there?

A. That was their own lookout, not mine. If I tell a man to stay clear of a tow-line he ought to have sense enough to stay clear of it.

Q. And after you told them that you went back and forth and you saw them there several times, didn't you? A. Yes.

Q. You say they did not reply to *them* when you told them to stay clear of that line.

A. No, sir, they did not.

Q. How do you know they heard you when you said that?

(Testimony of Charles Kruger.)

A. I don't know, I couldn't testify to that.

Q. Where were you when you told them that?

A. At the stern.

Q. Where were the other men?

A. The four men were playing cards.

Q. Where were the other men?

A. They were up in front.

Q. Didn't you testify that after you told them that that some of the men went forward and some stayed back there?

A. Yes; they were all over the boat, for that matter.

Q. But didn't you testify on direct examination that the men were all back on the stern part of the boat, and you told them to beware of the line, and that three of them went forward [115] and the rest of them stayed there?

A. Three forward and four aft, and one in the galley shaving.

Q. When did you tell the men to stay clear of the line?

A. When I started out from Port Reyes.

Q. Where were they then?

A. Some aft and some forward.

Q. And you went aft and told the four men back there to stay clear of the line? A. I did.

Q. Did you ever say anything to the other men about staying clear of the line?

A. They all heard me that were back aft.

Q. And nobody made any reply to you?

(Testimony of Charles Kruger.)

A. No.

Q. And it was after that that you went back to the rear of the boat several times? A. Yes.

Q. And you don't remember cleaning any fish for Mr. Carlson and sitting down talking with him?

A. I don't remember that; that was over a year ago, I don't remember that.

Q. You say when you went up you had a heavy sea? A. Yes.

Q. From Pier 46? A. From Pier 23.

Q. You got the barge at 46?

A. I got the barge the day before, yes.

Q. And when you went up there that day, the first time, you say you had a heavy sea?

A. Yes, sir.

Q. And you had all of your rope out at that time? A. Yes.

Q. What difference is there, Captain, in the length of rope that you have out when you are towing in a heavy sea and when you are towing with the sea?

A. I cannot answer that question.

Q. There is no difference at all, is there? As a matter of fact, there is no difference at all? Isn't that true, Captain?

A. Going against the sea, or going with the sea?

Q. Yes.

A. Going with the sea, the towboat will raise with the sea; going ahead, you buck into it.

Q. What difference does that make in the amount of line you [116] have out?

(Testimony of Charles Kruger.).

A. Going ahead, when you are bucking you don't raise with the sea, you just buck right into it.

Q. What difference does that make in the length of line you have out?

A. Because the line is steady all the time when it is going ahead with a strong northwest wind blowing.

Q. Can't you answer my question? Is there any difference, Captain, between the amount of tow-line that you have out, or must have out, when you are towing against the sea in a heavy sea such as you had on May 10th, or when you are towing with the sea like you had on June 8th; is there any difference in the amount of rope you ought to have out on those two occasions? A. No, sir.

Q. No difference at all? A. No, sir.

Q. That is your experience, is it?

A. Yes, sir.

Q. And you are now giving that as the competent way to tow a boat? A. Yes, sir.

Q. You have said about the loading of equipment, that the bedding was loaded on one side of the vessel. A. Yes.

The COURT.—What significance has that question of the loading?

Mr. HEIDELBERG.—I withdraw that question, your Honor.

The COURT.—I was wondering when Mr. Lillick was putting it in how that contributed one way or another, or had anything to do with the accident. What was your idea about that?

(Testimony of Charles Kruger.)

Mr. LILLICK.—My object in putting that in was to indicate that the men had other places to stand had they cared to have occupied other positions on the boat.

The COURT.—Is there any question about that?

Mr. HEIDELBERG.—Yes, there is a serious question about it.

The COURT.—Wasn't there room forward?

Mr. HEIDELBERG.—There was no room forward. [117]

The COURT.—All right, you may proceed.

Mr. HEIDELBERG.—Q. You have said there was nothing in front of the wheel-house: Is that true? A. Yes.

Q. As a matter of fact, didn't you have three water-casks on the "Three Sisters" at that time?

A. Not that I remember.

Q. Didn't you have three water-casks of about 300 gallons capacity, each, in front of the wheel-house?

A. No, sir. The water-casks were taken off before I started for the tow. I never carried any water-casks forward, the water-casks were carried aft.

Q. So you say that the water-casks were changed, the position was changed, at the time you were at Point Reyes: Is that what you mean?

A. I had no water-casks on board when I went up to get the tow. The "Corona" was carrying the water up to the pile-driver at the time.

(Testimony of Charles Kruger.)

Q. Didn't you carry some water up to the men at the time? A. Before, yes.

Q. But you are sure now that these three water-casks were not in front of the wheel-house on the "Three Sisters" when you came back that day?

A. No, sir, I had no water-casks aboard.

Q. I see some drawing here, I imagine it is a way to get down into the hold of the vessel: Is that correct? A. Yes.

Q. I will label that "X-5," and ask you the name of it.

A. That is the companionway down to the fore-castle.

Q. That takes up how much room?

A. It is about two feet wide; say about four feet square.

Q. And how wide is this boat at this point, X-5?

A. I couldn't tell you that.

Q. Bearing in mind that you have said that the extreme width is 18 feet, don't you remember, even from observation, what [118] width this would be? A. About 8 or 9 feet.

The COURT.—What is the scale of the drawing?

Mr. LINGENFELTER.—One-half inch to the foot.

Mr. HEIDELBERG.—Q. You had a new Diesel engine in the "Three Sisters," didn't you?

A. Yes.

Q. How long had it been in there?

A. About two months.

Q. Was it working fine at that time? A. Yes.

(Testimony of Charles Kruger.)

Q. As a matter of fact, it broke down, didn't it, when you were coming in?

A. Yes; I tried to race the engine, and I pretty near stuck a piston in her.

Q. As a matter of fact, when you went down there were fumes down in the hold, weren't there?

A. No, sir. When I opened up the engine to bring the men in, I ran about two hours; it was this side of Duxbury Reef where the engine stopped on me, and I lost about 15 minutes before I could start it up. There was a tight piston in it.

Q. And there were fumes down in the hold where the engine was located, weren't there?

A. Very little fumes.

Q. Didn't you tell these men who were on board that boat not to go below on account of the fumes?

A. No, sir.

Q. Didn't you tell them that if they did go below for any reason that they were not to smoke while they were there? A. No, sir.

Q. You don't remember having that conversation, either? A. No, sir.

Q. You don't know any of these men particularly, do you? A. No, sir.

Q. Don't you remember speaking to one of them in particular, and telling him—Mr. Trueheart—not to go below, but if he did go below not to smoke, on account of the fumes of the gasoline?

A. Gasoline? [119]

Q. Distillate. A. Distillate?

Q. Well, whatever the propelling power was.

(Testimony of Charles Kruger.)

A. That boat is not burning gas and it is not burning distillate; that boat burns crude oil.

Q. Well, it makes fumes just the same, doesn't it?

A. Not forward, no, because the water-tank is between that and the engine.

Q. As a matter of fact, you were overcome by those fumes on the way in yourself, weren't you?

A. No, sir.

Q. When you said the "Corona" carried passengers, you didn't mean to say that the "Three Sisters" did not carry passengers, did you?

A. I carried passengers in case when the other boat was not up there.

Q. How many men do you say were standing alongside of the wheel-house talking to Anderson, your deck-hand?

A. About three men, I think.

Q. As a matter of fact, only two men were there, weren't there? A. I could not swear to that.

Q. And were not those men on the side of the wheel-house rather than in front of it?

A. On the starboard side, there.

Q. You were not correct when you said they were in front of the wheel-house, there, were you?

The COURT.—I don't think he said that. He said they were on the starboard side of the wheel-house.

Mr. HEIDELBERG.—I also think the record will show that at one time he said they were in front of the wheel-house.

(Testimony of Charles Kruger.)

The COURT.—I know I asked him which side they were on and he said that the luggage was piled on the port side, and that these men were on the starboard side.

Mr. HEIDELBERG.—Q. There were no men in the front of that wheel-house at any time?

A. No, sir. [120]

Q. Do you mean to say, Captain, that that boat was not wet up in the front part of it?

A. No, sir; how could she be?

Q. Do you mean to say there were no sprays whatever coming over? A. How could there?

Q. Answer the question "Yes" or "No."

A. No, sir, no sprays were coming over.

Q. It was absolutely all dry up in front there?

A. Yes, sir.

Q. When you pulled the tow-line in after the accident, part of the bridle was still on it, wasn't it? A. Yes.

Q. And the swivel was still on it? A. Yes.

Q. What did you do with it?

A. They were aboard.

Q. They were aboard the "Three Sisters"?

A. Yes, sir.

Q. Were they aboard the "Three Sisters" the last time you were on board the "Three Sisters"?

A. I could not swear to that.

Q. Did anybody ever take them off to your knowledge? A. Not that I know of.

Q. What did you do with them after the accident?

(Testimony of Charles Kruger.)

A. We kept it aboard for a while, but I could not say what was done with it afterwards. It was probably laid on the dock or thrown overboard, for all I know of.

Q. I think that is probably true, Captain, you did throw it overboard. As a matter of fact, didn't you throw it overboard?

A. Where would I throw it overboard at?

Q. I am asking you if you did not throw it overboard. A. I don't know whether I did or not.

The COURT.—Q. Did you look at the bridle when you hauled it aboard? A. No, Judge.

Q. When your tow broke loose and you pulled your line aboard, did you take a look at the bridle to see what had broken, and how it was broken?

A. No, sir, because I was too excited, and the men were unconscious, and I was just thinking about getting [121] them home.

Q. You raced for port? A. Yes, sir.

Mr. LILLICK.—Q. And over-speeded your engine and stuck a piston because you were in a hurry?

A. Yes. I opened her up at that time to see how fast I could get in, and I had to stop, and she got cool, and I started up again.

Mr. HEIDELBERG.—Q. What was the gross tonnage of the "Three Sisters"?

A. I should judge about 11 tons.

Q. 11 tons net? A. Yes.

Q. What course did you say you were steering coming back? A. East by south, half south.

(Testimony of Charles Kruger.)

Q. Is that true or magnetic? A. Magnetic.

Q. What is the difference between true and magnetic?

A. One is a true course; a magnetic course is what you steer by the chart, magnetic.

Q. This man who was with you, this deck-hand, he was not a licensed man, was he? A. No, sir.

Q. As a matter of fact, was he an able seaman?

A. Yes, sir.

Q. As a matter of fact, Scotty Evans, of the pile-driving crew, steered the boat for you part of the time while you were below, didn't he?

A. Probably he did, I don't remember.

Q. Don't you remember whether or not Scotty Evans steered this boat for you?

A. On the way coming home, you say?

Q. Yes. A. Probably he did.

Q. Don't you remember that he did?

A. I could not swear to that.

Mr. HEIDELBERG.—That is all.

Redirect Examination.

Mr. LILLICK.—Q. One of the questions asked you by Mr. Heidelberg insinuated that you had thrown this bridle overboard in order to lose it so that it might not be brought to light: Do you know anything about any such throwing overboard?

[122] A. No, sir.

Mr. LILLICK.—That is all.

The COURT.—We will adjourn now until tomorrow morning at ten o'clock.

(Testimony of Walter G. B. Westman.)

(An adjournment was here taken until to-morrow, Wednesday, August 6, 1924, at ten o'clock A. M.) [123]

Wednesday, August 6, 1924.

TESTIMONY OF WALTER G. B. WESTMAN,
FOR PETITIONER.

WALTER G. B. WESTMAN, called for the petitioner, sworn.

Mr. LILLICK.—Q. Mr. Westman, what is your occupation?

A. I am the Crowley Launch & Tugboat superintendent of the shipyard.

Q. And how long have you been such shipyard superintendent? A. For about seven years.

Q. Prior to that time what was your business?

A. Superintendent of operations for the Crowley Launch & Tugboat Company.

Q. As such employee of the Crowley Launch & Tugboat Co., have you a knowledge of the make-up of the bridles used by the Crowley Launch & Tugboat Company? A. I have, yes.

Q. Will you tell us whether they are of different sizes, or whether they are all of the same size?

A. There is very little variation; they are practically all the same size.

Q. What are the lengths and what is the make-up and the dimension of the bridles used by the Crowley Launch & Tugboat Company in towing barges such as barge 61?

(Testimony of Walter G. B. Westman.)

Mr. HEIDELBERG.—That is objected to as immaterial, irrelevant and incompetent, having nothing to do with the issues of this case, because it relates to the towing by Crowley of such barges, and has no particular connection or significance with the towing of this actual barge by A. Paladini, Inc.

The COURT.—Has this witness knowledge of this particular bridle, Mr. Lillick?

Mr. LILLICK.—I am afraid not, your Honor, but I will ask him that question preliminarily. I have not seen the witness as I should, before putting him on the stand; Mr. Lingenfelter [124] obtained him.

Q. Do you know, Mr. Westman, the particular bridle used in this towing job by the “Three Sisters”?

A. No, not this particular bridle.

Mr. LILLICK.—Your Honor, my object is to show that bridles of this type, size and character were used by the Crowley Launch & Tugboat Company for towing this particular barge, No. 61, and that they were used for inside and outside towing, and then for the specific purpose of showing that the play in the swivel, which it is said was rusted, which it is claimed by the other side was rusted hard or frozen, would be practically a physical impossibility on account of the play in the thimble. That is all pertinent in this case, for the reason that the bridles used by the Crowley Launch & Tugboat Company were of this type.

The COURT.—I will overrule the objection.

(Testimony of Walter G. B. Westman.)

A. The bridles consist of approximately 35 feet, of about $\frac{7}{8}$ wire cable.

Mr. LILLICK.—Q. You mean 35 feet on each side, or do you mean 35 feet in length?

A. 35 feet in length on each side.

Q. That is, from the loop over the bitt to the swivel? A. Yes, sir.

Q. What is that swivel; will you explain to us what the swivel is?

A. The swivel consists of two dropped forgings connected together by a rivet so as to allow the two sections to work either backward or forward, to eliminate the turns from the line or rope.

Q. How much play is there in that swivel?

Mr. HEIDELBERG.—That is objected to again as being immaterial, irrelevant and incompetent, and having nothing to do with this particular swivel which was used on this occasion. [125]

The COURT.—Objection overruled.

A. Usually about a quarter of an inch play.

Mr. LILLICK.—You are acquainted with the size of barge 61? A. I am.

Q. In towing barges of that size, do you, in the towing done by the Crowley people, tow those barges loaded with rock? A. We do.

Q. For that towing do you or do you not use this type of bridle?

A. We use this type of bridle exclusively.

Q. During your experience have you ever known of one of those swivels to be frozen by rust, that is, tight by rust? A. No, I never have.

(Testimony of Walter G. B. Westman.)

Q. Are you able to state whether there are bridles used in this heavy towing that have no swivels?

A. There are.

Q. What is that type of bridle?

A. They splice a round thimble in the end of the rope and then splice the wires direct under these thimbles without any swivel.

Q. The thimble which you mention, does that permit of a rotating such as the swivel would permit of?

A. The manila line has to take care of the rotating in that case.

Q. That is not an answer to my question. I say, does the thimble which you mention permit of rotating such as the swivel would permit of, or is it fast? A. It is fast.

Q. The rope, itself, takes up the turns?

A. The rope, itself, takes up the turns; in other words, it compensates.

Mr. LILLICK.—That is all.

Cross-examination.

Mr. HEIDELBERG.—Q. You say you don't know anything at all of your own knowledge of the particular bridle or swivel that was used in the towing of barge 61 by Paladini on or about May 10, 1923? A. I do not. [126]

Q. You do not know whether it was a $\frac{3}{4}$ wire bridle or a $\frac{7}{8}$, or a $\frac{5}{8}$ bridle, do you?

A. I do not.

Q. And you don't know anything about the con-

(Testimony of Walter G. B. Westman.)

dition of this particular swivel or the condition of the wire rope that was attached to that swivel, do you?

A. Other than what ordinarily takes place in other swivels and bridles.

Q. I will ask you the question again. I say you don't know of your own knowledge anything about the specific condition of this particular tackle that was used in towing this barge on that occasion?

A. No, I do not.

Q. When you say that you used a swivel for towing, you have reference to inside towing, haven't you? A. Inside or outside.

Q. Do you mean to say that it is the accepted form of towing in outside work to use a swivel?

A. As far as the Crowley Launch & Tugboat Company is concerned.

Q. What would you say as to the general practice and mode of outside heavy towing, what tackle is used?

Mr. LILLICK.—Now, your Honor, as to that heavy towing, we have a right to have specified either ship towing, which is known as heavy towing, the towing of steamers up and down the coast, or the towing of barges. I think the question is objectionable on that ground.

The COURT.—Perhaps you had better confine it to barges, Mr. Heidelberg.

Mr. HEIDELBERG.—Q. Have you any knowledge of the way barges of this kind are generally towed in outside waters?

(Testimony of Walter G. B. Westman.)

A. They are always towed with a bridle, particularly rudderless barges or square-end barges.

Q. When you say "bridles," you use bridles with thimbles, don't you?

A. We use them with swivels. [127]

Q. You do use them with thimbles?

A. We do not.

Q. But they are used with thimbles, aren't they?

A. They are.

Q. And is not that the accepted way of towing, by others than the Crowley Company?

A. No, not by the Crowley Launch & Tugboat Company.

Q. If a swivel will take turns out of a line, won't it put turns in a line?

A. No, it will not. Water will not run up hill.

Q. Do you mean to say that swivels will not put turns in a rope as well as take them out?

A. It will not put turns in a rope, no.

Q. Won't the simple play of the swivel put turns in a rope?

A. The play in the swivel is there for the purpose of eliminating any turns in the rope.

Q. Is it not a fact that swivels are used by long-shoremen in lifting perpendicular weights to keep the weight from swinging? A. Absolutely.

Q. And is it not true that it loses its force and effect when used for straight towing? A. No.

Q. What proportion of outside towing does the Crowley Company do as compared with inside towing? A. Probably about 5 per cent.

(Testimony of Walter G. B. Westman.)

Q. You were not consulted about the securing of this bridle by the Healy-Tibbitts Construction Co., or by Paladini, were you? A. No.

Redirect Examination.

Mr. LILLICK.—Q. From your position with Crowley's, and from your general experience on the bay, are you able to state, in terms of general approximation, the percentage of towage done on San Francisco Bay and out of the bay of barges of the character of barge 61 as compared with the total towing done by all of the other concerns operating on San Francisco Bay? [128]

Mr. HEIDELBERG.—That is objected to as being immaterial, irrelevant and incompetent, and having nothing to do with the case.

The COURT.—Objection overruled.

A. No; that is rather a large question to answer, Mr. Lillick.

Mr. LILLICK.—Q. I asked you to state approximately. Will you give us your best judgment about it?

A. The ratio of barges towed inside as against the barges towed outside?

Q. The ratio of barge towing by the Crowley Launch & Tugboat Company in comparison with all of the other towing done by all of the other concerns operating on San Francisco Bay.

Mr. HEIDELBERG.—That is objected to also unless it is limited to outside towing.

Mr. LILLICK.—I am asking this, your Honor,

(Testimony of Walter G. B. Westman.)

to meet the questions asked by counsel on the other side.

The COURT.—I understand it. I will overrule the objection.

A. Do you mean in percentage?

Mr. LILLICK.—Q. In a general way, say within 10 per cent. I do not mean with any definite accuracy, I mean within a percentage of either 10 per cent either way.

A. I would say that we do practically one-third of the outside towing, as compared with the others.

Q. How many barges does Crowley operate?

A. Approximately about 20.

Q. What was your position with the Crowley Launch & Tugboat Company in June, 1923?

A. Shipyard superintendent.

Q. As such shipyard superintendent, had you anything to do with the inspection of the bridles used by the company at that time? A. No—

Mr. HEIDELBERG.—Just a moment. That is objected to, your Honor, as immaterial, irrelevant and incompetent. [129]

The COURT.—He answered it “No.”

Mr. HEIDELBERG.—Then I move to strike out the answer.

Mr. LILLICK.—It may go out.

Mr. HEIDELBERG.—I just want to keep the record straight, your Honor.

The COURT.—Very well.

Mr. LILLICK.—Q. Do you know whether or not the Crowley Launch & Tugboat Company in

(Testimony of Walter G. B. Westman.)

June, 1923, had a bridle in its ownership made of $\frac{5}{8}$ -inch wire? A. I think not.

Q. What was the size of the bridle used by the Crowley Launch & Tugboat Company at that time?

A. The smallest were $\frac{3}{4}$ and the largest $\frac{7}{8}$.

Recross-examination.

Mr. HEIDELBERG.—Q. You have never seen this broken bridle, have you, since this accident?

A. I have already answered that question.

The COURT.—He said he knew nothing about that at all.

Mr. HEIDELBERG.—Q. I mean since the accident you have never seen it?

A. I have never seen it.

TESTIMONY OF WILLIAM FIGARI, FOR PETITIONER.

WILLIAM FIGARI, called for the petitioner, sworn.

Mr. LILLICK.—Q. In May of 1923 what was your position with the Crowley Launch & Tugboat Company?

A. General superintendent of operations.

Q. Will you tell us whether during that month any application was made to you for a towing bridle? A. Yes, sir.

Mr. HEIDELBERG.—Now, just a moment. That is objected to, may it please your Honor, as immaterial, irrelevant and incompetent, unless it is specified who it was made by, and that it [130] has application to this particular case.

(Testimony of William Figari.)

Mr. LILLICK.—We propose to prove by this witness, if your Honor please, that in May, 1923, Brown, the superintendent of construction of the Healy-Tibbitts Construction Co., telephoned and asked for a bridle, that this witness picked out that bridle, that this witness thereafter sent the bridle out, and that it was of a definite size.

Mr. HEIDELBERG.—I have no objection to that question if you ask him if Mr. Brown of the Healy-Tibbitts Co. did it. You cannot ask him if anyone did it.

Mr. LILLICK.—That is just what my question asked him.

The COURT.—Objection overruled.

A. Yes. Mr. Brown asked me for a bridle. I told him I didn't have any, that I would have to take one off the boats. He said he wanted a bridle to take a barge, barge 61. He said it would help him out very much if he could get one. I took one off one of the boats, one of our large boats.

Mr. LILLICK.—Q. What kind of a bridle was it? A. It was a wire bridle.

Q. What is the size of the wire?

A. Well, I could not say; we use $\frac{5}{8}$, $\frac{7}{8}$ and $\frac{3}{4}$; it was either $\frac{7}{8}$ or $\frac{3}{4}$. I could not say what was the size of it—I could not say exactly.

Mr. LILLICK.—Mr. Reporter, will you read that answer back to the witness.

(Answer read by the reporter.)

Q. You notice, Mr. Figari, you said $\frac{5}{8}$.

(Testimony of William Figari.)

A. I don't mean $\frac{5}{8}$, I didn't mean that, I meant $\frac{7}{8}$ or $\frac{3}{4}$.

Mr. LILLICK.—Your Honor will notice that the witness said $\frac{5}{8}$, and I think said it inadvertently.

The COURT.—Yes. I understood him. [131]

Q. You use $\frac{7}{8}$ and $\frac{3}{4}$? A. Yes.

Q. Steel cable?

A. Yes, made by Waterbury, as all our bridles are.

Mr. LILLICK.—Q. What is the material from which the swivel is made?

A. It is a steel swivel.

Q. Do you know what the play in that swivel was, the distance between the portion of the swivel that ran in the center portion of the surrounding part of it—I don't know the technical term for it.

Mr. HEIDELBERG.—That is objected to as being immaterial, irrelevant and incompetent, unless it is connected up with this particular swivel.

The COURT.—That is the one he was asking about.

Mr. LILLICK.—I am asking him about that one.

The COURT.—Q. You gave Brown a bridle, did you? A. Yes, sir.

Q. It had a swivel on it?

A. It had a swivel on it.

Q. What was the play of the swivel of the bridle you gave to Mr. Brown?

A. I do not know the exact play. They wear pretty well, you know, from constant towing.

(Testimony of William Figari.)

Q. Was the swivel allowed only a certain play, or did it make a complete revolution?

A. I should imagine it was probably about a quarter of an inch play in the swivel, more or less.

Q. It was not a completely free swivel?

A. It was free, yes, sir.

Q. Could it play clear around?

A. Oh, yes, it could play clear around. It has to take the turns out of the line. The boat was using it all the time; I took it out of a boat that was using it.

Q. What do you mean by a play of a quarter of an inch?

A. That is the pin that goes through the two eyes; there are two eyes, and there is a pin that goes through; it is riveted [132] on each end.

Mr. LILLICK.—Q. The swivel is practically a riveted wire in a socket, isn't it? A. Yes.

Q. And in speaking of play, you mean the turn between the rivet, itself, and the wires of steel surrounding it: Is that correct? A. Yes, sir.

Q. Did you examine this particular swivel?

A. No, I didn't examine the swivel; I just took it off the boat that was using it and put it on the dock, and I think the Healy-Tibbitts truck came down and took it away; I am not sure whether I delivered it or whether the Healy-Tibbitts truck took it away.

Q. Do you know whether or not it was in good condition?

(Testimony of William Figari.)

A. It was in good condition. It was used on the boat for towing the same identical barges that we rented to Healy-Tibbitts.

Q. Who inspects your equipment?

A. The captains of the tugs inspect their own equipment.

Cross-examination.

Mr. HEIDELBERG.—Q. You don't know anything now of your own knowledge about this particular swivel that you let Brown have, do you?

A. No. The only thing I know is that it was used on the boat.

Q. And you have never seen that swivel since, have you? A. I have not seen it since.

Q. So you have no way at this time of positively identifying that particular swivel in your mind as compared with the rest of the swivels or bridles that Crowley now has? A. No.

Q. And you did not do anything to that swivel before you put it on the dock or before it was delivered to the barge, did you?

A. I got the captain of our tug to take it off his boat, cut the manila line out and just throw the bridle on the dock. [133]

Q. You didn't touch that bridle, at all, yourself, you had the captain throw it on the dock?

A. I told him to take it off. I just looked at it. I told him to cut the line and put it on the dock.

Q. But you would not say now whether it was

(Testimony of William Figari.)

a three-quarters or a seven-eighths wire attached to it, would you?

A. No. We used to use three-quarters all the time, but we are getting bigger boats and using larger wire.

Q. You were not told for what purpose this bridle and swivel were to be used, were you?

A. Yes, he told me he wanted to tow a barge up to Point Reyes.

Q. You say now you were told the purpose?

A. He told me he wanted to tow a barge, and I heard it was going to Point Reyes, and I supposed that was what he was going to use it for.

Q. You had a conversation with me, did you not, in the office of the Crowley Launch & Tugboat Co., in the presence of Mr. Carlson, on Monday afternoon? A. Yes, sir.

Q. Didn't you tell me at that time and at that place, in the presence of Mr. Carlson, that you did not know what he wanted that bridle for?

A. No, I don't think I said that.

Q. You don't remember saying that to me?

A. No.

Q. Don't you remember having a prior conversation with Mr. Carlson some three or four months ago at the Crowley Launch & Tugboat Co. and at that particular time you said to him, in substance and effect, that you did not know what they wanted this bridle and swivel for. Don't you remember having that conversation?

A. No.

(Testimony of William Figari.)

Q. Don't you remember further saying to him at that particular time and place that if you had known what they wanted it for you would not have let them have it? A. No.

Q. Don't you remember having a talk with Captain Fogel about [134] three months ago in the office of the Launch Company about this bridle?

A. Yes.

Q. Didn't you say to Captain Fogel at that time, if you knew what they wanted the bridle for you would not let them have it?

A. No, I did not, because I knew what they wanted it for.

Q. And you now say again that you did not tell me last Monday afternoon, in the office of the Crowley Launch & Tugboat Company, in the presence of Mr. Carlson, that you did not know what they wanted this for? A. I did not.

Redirect Examination.

Mr. LILLICK.—Q. On this question of the claim that you told someone that you would not have let them have this bridle if you had known what they were going to use it for, were bridles of similar sizes used by the Crowley Launch & Tugboat Co. at that time for towing this barge 61?

A. Yes, sir.

Mr. HEIDELBERG.—That is objected to as being immaterial, irrelevant and incompetent. The witness has already testified he did not know.

Mr. LILLICK.—If your Honor please, we have had thrown out an insinuation in this case that

(Testimony of William Figari.)

we threw away a bridle; now we have it that this witness is accused of having said in the presence of someone else—and I suppose they will put that person on to testify—that he would not have let them use this bridle. Is it not competent to show that at that time—

The COURT.—I understand the situation, Mr. Lillick; the objection is overruled.

Mr. LILLICK.—Q. Will you answer the question, now please? A. I answered it yes.

Q. Do you mean outside the Heads?

A. We don't do any outside towing; most all our towing is in the bay. We have towed a [135] barge like that up to Point Reyes, and we used the same kind of a bridle. We do very little outside towing. If we do go outside it may be just outside the Gate; we might have a barge of rubbish, or something like that to tow out. We do very little outside towing, it is all in the bay.

Q. Referring to these conversations that it is said you had with these other gentlemen, will you tell me, as you best remember it, what was said by them and what was said by you about this bridle; what did they say to you?

The COURT.—I think that is more properly rebuttal, Mr. Lillick, isn't it, because a mere question being asked is not evidence.

Mr. LILLICK.—Certainly not, your Honor. Then I will withdraw the question for the time being.

(Testimony of William Figari.)

Recross-examination.

Mr. HEIDELBERG.—Q. It is a fact, is it not, that when the Crowley Launch & Tugboat Co. does do outside towing they only go a short distance outside the Heads? A. Yes.

Q. And when they do they use a $\frac{7}{8}$ -inch bridle: Isn't that true?

A. We use $\frac{7}{8}$ -inch bridle. We don't go very far out. On one occasion we towed the same identical barge up to Drake's Bay for a boiler. That was about the only time I remember we went a long distance towing a barge outside. We do very little outside towing.

Q. Now, this conversation that you had with Martin Brown, did that take place personally, or was it over the telephone?

A. Personally. I was up at Pier 46 at the time.

Q. And it took place in person?

A. Yes, in person.

Q. Didn't you tell me Monday, in the presence of Mr. Carlson, that he telephoned down to you?

A. No. I was up at 46. I was [136] sent up to 46 to look at the barge, and when I was there Martin Brown asked me for a bridle.

TESTIMONY OF HARRY B. ANDERSON.
FOR PETITIONER.

HARRY B. ANDERSON, called for the petitioner, sworn.

Mr. LILLICK.—During yesterday's session, your

(Testimony of Harry B. Anderson.)

Honor, we were asked for the license of Charles Kruger. We have the license here. This is the license, however, under which Kruger now operates, and I would like to substitute for the license, itself, a copy, if it is to be introduced in evidence.

Mr. HEIDELBERG.—You made the copy, did you?

Mr. LILLICK.—No, I did not, but I am told by Mr. Lingenfelter that it is a copy. I am simply producing it now in response to the demand made for it by opposing counsel yesterday.

Q. Mr. Anderson, in June of 1923 what position did you occupy with the “Three Sisters”?

A. A deck-hand.

Q. Do you remember going to Drake’s Bay to get a pile-driver? A. Yes, I do.

Q. When you arrived at Drake’s Bay, do you remember whether it was in the afternoon or in the morning?

A. I should judge it would be in the afternoon some time.

Q. Who was in command of the “Three Sisters”?

A. Captain Kruger.

Q. When you arrived at Drake’s Bay what did you find as to the situation with reference to bringing the pile-driver back?

A. They had not finished the work up there.

Q. What did you and Kruger do until they finished the work?

A. We laid alongside the fish barge.

(Testimony of Harry B. Anderson.)

Q. And when they finished the work, what did you do?

A. We came back to take the driver.

Q. When you came back to take the driver, who affixed the bridle?

A. The pile-driver crew. [137]

Q. And after you started towing, were the men on the pile-driver, or were they on the "Three Sisters"? A. They were on the driver.

Q. How long, approximately, was the hawser between the "Three Sisters" and the pile-driver when you started to tow? A. 50 or 75 feet.

The COURT.—Let me ask a question here.

Q. You first attached a line and walked off from the dock, didn't you? Didn't you attach a single line and walk the barge away from the wharf?

A. We let go altogether, and we just turned her right around with the short line.

Q. Then when the bridle and the line were fixed for the final tow—Drake's Bay is an open roadstead, isn't it? A. Yes, sir.

Q. Then who fixed the bridle on to the barge?

A. The pile-driver crew put it on the bitts.

Q. And that is all they had to do, was it, just to put the loops over the bitts?

A. Yes, to put the loops over the bitts.

Mr. LILLICK.—Q. At that time did you notice whether the swivel was turning freely in its socket?

A. No, I didn't notice the swivel at all.

Q. After you started back, how long was it before the hawser was lengthened?

(Testimony of Harry B. Anderson.)

A. I should judge we went about fifteen minutes or half an hour.

Q. About where were you when that was done?

A. I should think it would be right abreast of the bell buoy.

Q. After you had lengthened the hawser, what did the men on the driver do, either before or after?

A. We did not lengthen the hawser then. We backed up and we took the men aboard, and then we lengthened the hawser.

Q. After having backed up and taken the men aboard, how long did you make the hawser, what was the length of the hawser? [138]

A. We let her run to about full length.

Q. How far in feet would you say that was?

A. I should judge it would be about 400 feet.

Q. How did it happen that you went back to take the men off the pile-driver?

A. I guess that was understood, that we would take them aboard.

Q. Understood by whom and in what way?

A. The pile-driver crew, that is, the pile-driver foreman, because he was aboard the "Three Sisters."

Q. Did you hear any conversation about that?

A. No, I didn't.

Q. Do you mean that the foreman of the pile-driving crew was on board the "Three Sisters" while you were making the tow to the bell buoy?

(Testimony of Harry B. Anderson.)

A. He was on the "Three Sisters" while we were making the tow out to the bell buoy.

Q. And the other men were then on the pile-driver? A. On the pile-driver.

Q. After they came on board and you started to make the tow, what position did you take on the "Three Sisters"? A. I took the wheel.

Q. How long did you remain at the wheel?

A. Almost an hour.

Q. Did you remain at the wheel up to the time of the accident?

A. I remained at the wheel up to the time of the accident.

Q. You were still at the wheel when the accident occurred?

A. I was at the wheel when the accident occurred.

Q. Did you see the bridle break?

A. No, I didn't.

Q. Where were the men on the "Three Sisters" at the time the bridle broke? Will you locate each man that was on the "Three Sisters," including Kruger, and the positions that they occupied when the bridle broke?

A. Four of them were aft, playing cards, on the starboard side by the bits; there were [139] two of them talking to me into the wheel-house that is, they were talking into the wheel-house to me; one of them was shaving in the galley.

Q. That is seven in all.

A. I believe it is, yes.

(Testimony of Harry B. Anderson.)

Q. As you were coming out from the buoy, was there any water breaking over your bow?

A. There couldn't have been.

Q. Why not?

A. Because we were running with the sea. We were taking it on the starboard quarter.

Q. How about the man who was standing just out of the pilot-house, in front of you, if there had been water breaking over would it have struck them?

A. I say it couldn't because we were coming with it.

Q. But I say if there had been, would they have been wet by it? A. They would have been wet.

Q. Did you hear any conversation at all between Captain Kruger and the men on the pile-driver as they came aboard, with reference to a safe place on the "Three Sisters"? A. No, I didn't.

Q. Where were you at the time the men came aboard?

A. I believe I had already taken the wheel.

Q. Had the captain been at the wheel at any time? A. Yes, he had.

Q. Where was the equipment that was put on the "Three Sisters" first?

A. Most of it was on the port side.

The COURT.—Is that disputed at all, that is, the fixing of these goods by Captain Kruger?

Mr. LILLICK.—I am not sure about it, your Honor. I don't know whether the other side is going to make any point about that, or not.

(Testimony of Harry B. Anderson.)

Mr. HEIDELBERG.—I think that has been pretty well accounted for. [140]

Mr. LILLICK.—Very well, then, I will not cover the same point twice.

Q. Where was Kruger at the time of the breaking of the line?

A. On the port side of the wheel-house.

Q. In any particular position with reference to the lever or control to the engines?

A. Yes, right in front of it—right aft of it, rather.

Q. Do you know whether he used it?

A. He stopped down as soon as she snapped.

Q. What speed were you running after you left the bell buoy, at what speed were you running?

A. He slowed down, but I cannot say what speed he was going. I know he slowed down. I am not familiar with the engine, so I couldn't say.

Cross-examination.

Mr. HEIDELBERG.—Q. Mr. Anderson, are you an able seaman? A. Yes, sir.

Q. Have you got your papers? A. Yes, sir.

Q. Will you let me see them? A. Yes.

Mr. LILLICK.—I think it is not necessary to have an able seaman on such a launch, your Honor.

The COURT.—Well, if he has them, that ends it.

Mr. HEIDELBERG.—Q. You say the men were on the pile-driver at the start? A. They were.

Q. When you say that, you don't mean all the men of the pile-driving crew were on there, do you?

(Testimony of Harry B. Anderson.)

A. No. The foreman and the cook were aboard the "Three Sisters."

Q. And they were aboard the "Three Sisters" from the very beginning of that voyage, were they not? A. From leaving the dock.

Q. At no time were they aboard the barge?

A. No, they were not. [141]

Q. Is it not a fact that the men were aboard the barge because they were putting the bridle over the bits; isn't that one of the things they were doing?

A. It is one of the things they were doing.

Q. And another thing they were doing was lifting the anchor? A. Yes.

Q. And that is the reason why the men were on board the barge, wasn't it?

A. Not alone that; they were making things secure, which they had to do.

Q. In other words, they were preparing the barge so that the "Three Sisters" could tow it away from there? A. In their line of duty.

Q. Would you say that it was in their line of duty to attach the swivel and the bridle to the bits, or would that be the duty of the crew of the boat?

Mr. LILLICK.—That is objectionable, your Honor, because it is purely the conclusion of the witness.

The COURT.—Well, let him answer it.

A. Anybody could have done that; they were just handy at the time.

Mr. HEIDELBERG.—Q. You are an able seaman, aren't you? A. Yes.

(Testimony of Harry B. Anderson.)

Q. Is it not the duty of the members of the crew of a towboat to see that their tow, as far as the anchor and as far as the attachment of the bridle are concerned, isn't it their duty to perform that work?

Mr. LILLICK.—We object to that on the ground that it calls for the conclusion of the witness, and perhaps it is not particularly material.

The COURT.—Let him state his conclusion.

A. Well, on big ships, the towboat usually gave us a line and [142] the crew of the boat made the bridle fast.

Mr. HEIDELBERG.—Q. In regard to this particular tow here, don't you think it was your duty to have seen that that anchor was lifted?

Mr. LILLICK.—Now, your Honor, that certainly is objectionable.

Mr. HEIDELBERG.—All right, we withdraw the question.

The COURT.—Yes; the general custom might be of some value.

Mr. HEIDELBERG.—Q. You say you let the rope out to the full length about the time you passed the bell buoy.

A. About the time we passed the bell buoy, yes.

Q. And the captain never altered that rope in any way after that time and up to the accident, did he? A. No.

Q. You said that the length of that rope when it was out full length was about 400 feet?

A. About 400 feet.

(Testimony of Harry B. Anderson.)

Q. And all the rope was out?

A. Well, there may have been, say, about 18 feet on the deck.

Q. You would not say there was any more than that on the deck, would you? A. No, I would not.

Q. Then you would say that the full length of that rope was about 418 feet?

A. Something like that.

Q. Not to exceed 425 feet at the most? A. No.

Q. You say you were at the wheel of the "Three Sisters" for quite a while.

A. When the accident happened.

Q. And you had been there for about an hour previous to that time? A. Yes.

Q. Do you remember whether or not Scotty Evans was at the wheel of the "Three Sisters"?

A. He was.

Q. He was. Your memory is better than the captain's.

Mr. LILLICK.—What is that? [143]

Mr. HEIDELBERG.—His memory is better than the captain's on that.

Mr. LILLICK.—What does the captain say? Just for my information, what did he say?

Mr. HEIDELBERG.—He didn't remember it; he doubted it.

Mr. LILLICK.—I think that remarks of that kind in this court, may it please your Honor, are out of order.

The COURT.—Well, it won't do any harm; I am

(Testimony of Harry B. Anderson.)

not going to decide this case on the remarks of counsel.

Mr. HEIDELBERG.—Counsel asked for it. Of course, if the case was before a jury it might not have been proper, but under the circumstances I think it is all right.

Q. When the captain was below, you were at the wheel, were you not? A. Yes.

Q. And there was no other member of this crew? A. Just the captain and myself.

Q. In order to see that tow, you would have to look out the side windows of that steering-house, wouldn't you?

A. Not the side windows, right aft; there was a window right on top of the galley, several small windows, which you could look out.

Q. And you were alone in the wheel-house all of that time? A. Most of that time, yes.

The COURT.—Q. How long have you been an A. B.?

A. I started to sea when I was 15 years of age and I am 22 now. I have been on transports, and oil tankers, and gasoline schooners.

Q. And you took your turn at the wheel?

A. Yes; I have been a quartermaster on the "Madrona" and I have been a quartermaster on the "Nevada."

The COURT.—Is Captain Kruger still here? [144]

Mr. HEIDELBERG.—Yes, your Honor, he is in the courtroom now.

(Testimony of Charles Kruger.)

The COURT.—I would like to ask him a question.

Mr. LILLICK.—Will you take the stand, Captain Kruger?

TESTIMONY OF CHARLES KRUGER, FOR
PETITIONER (RECALLED).

CHARLES KRUGER, recalled for petitioner.

The COURT.—Q. Captain, what was your course coming down? A. East by south, half south.

Q. And what directions were these swells?

A. We call them westerly swells.

Q. How would they catch you?

A. About on the quarter.

Mr. LILLICK.—If your Honor please, it has been inconvenient to bring here one of our witnesses, a Mr. Brown, and, his testimony being short in any event, counsel upon the other side have been good enough to stipulate that were he in court he would testify as follows—

Mr. HEIDELBERG.—I wish you would read that now. I think it is all right, but, owing to the testimony of Mr. Figari about the telephoning and one thing and another like that, I don't know but what Mr. Brown ought to be here.

Mr. LILLICK.—Very well, I will bring him out here.

Mr. LINGENFELTER.—Martin Brown is engaged in building a water conduit down at Dumbar-ton. We are holding up Hetch Hetchy, your Honor, if we have to bring him up here.

(Testimony of Charles Kruger.)

Mr. LILLICK.—I am relying upon the stipulation counsel said he would make with me.

Mr. HEIDELBERG.—What is it?

Mr. LILLICK.—(Reading.) “I am superintendent of construction for Healy-Tibbitts Construction Co., and was engaged in [145] that capacity in the month of May, 1923. During the early part of that month I was asked by Mr. Horten, of our company, to secure a bridle for Crowley’s barge No. 61 from the Crowley Launch & Tugboat Company. I telephoned William Figari of Crowley’s and he told me he would get a bridle. My recollection is that Mr. Figari either brought this bridle down to the barge at Pier No. 46 or sent it down, at any rate I am sure that the bridle was delivered aboard the barge at Pier No. 46.”

Mr. HEIDELBERG.—It is so stipulated.

TESTIMONY OF ORVILLE DAVIS, FOR PETITIONER.

ORVILLE DAVIS, called for the petitioner, sworn.

Mr. LILLICK.—Q. Mr. Davis, what is your present occupation?

A. Port engineer for the Paladini Fish Company.

Q. How long have you been such port engineer?

A. Since some time in June.

Q. Of what year? A. 1923.

Q. To refresh your recollection, Mr. Davis, you took Mr. Carlton’s place between the 10th of May and the 10th of June, 1923, did you not?

(Testimony of Orville Davis.)

A. Yes, sir.

Q. Prior to your taking the position of port engineer for A. Paladini, Inc., what was your occupation?

A. Guarantee engineer for Fairbanks Morse.

Q. What period of time had you been such?

A. About nine months.

Q. Had you just prior to this at any time been on the "Corona"?

A. Yes, sir.

Q. In what position?

A. Chief engineer.

Q. During that time did you run at all to Drake's Bay?

A. One trip, I believe.

Q. And that was while they were working upon this pier?

A. They had not started yet. [146]

Q. Will you give us in a general way your experience as an engineer, and how long you have had a license, and, in a general way, your qualifications as an engineer?

A. Well, I have been around boats and engines since I was about—well, as far back as I can remember. I served my time as a machinist. I worked on various boats. I was ten years as engineer and pilot on the Mississippi, that is, off and on.

Mr. LILLICK.—We offer in evidence, if your Honor please, subject to our withdrawal afterwards, the licenses held by Mr. Davis from time to time, in ocean-going vessels, as well as an engineer of vessels propelled by gas, naphtha, etc. We will substitute for the originals copies so that they may be put in the record.

(Testimony of Orville Davis.)

Mr. LINGENFELTER.—I have copies here, Mr. Lillick.

Mr. LILLICK.—I understand there will be no objection by counsel on the other side to our substituting copies for the originals.

Mr. HEIDELBERG.—No.

Mr. LILLICK.—I will let Mr. Bell examine these copies and compare them with the originals.

Q. Who employed you as a port engineer for Paladini? A. A. Paladini.

Q. After having been employed as such, what were your duties?

A. The care and maintenance of the boats and the equipment.

Q. With reference to repairs that might be needed upon any of the boats, what did you do?

A. I went ahead and done them or had them done.

Q. Had Mr. Paladini anything to do with them?

A. No, sir.

Q. Did Mr. Paladini have anything to do with the actual management of the vessels in so far as their operation was concerned? [147]

A. Nothing.

Q. Did he inspect the vessels, himself?

A. Not that I know of.

Q. What happened if, for example, one of the vessels needed repairs in her engine-room, what did you do?

A. Made arrangements to have them done, or done them myself.

Q. Whose discretion was used as to that?

(Testimony of Orville Davis.)

A. Mine.

Q. Did you have anyone over you in any way, Mr. Davis? A. No one.

Q. Just prior to the bringing back of the pile-driver from Point Reyes, will you tell us what you did about preparing for the work?

A. I got things ready.

Q. By saying you got things ready, what do you mean, what did you do? A. The tow-line.

Q. Did you personally get that tow-line ready?

A. I did.

Q. What did you do about getting it ready?

A. It was coiled up on the dock and I ran the coil out on the floor toward the door alongside the boat.

Q. What dock was that? A. Pier 23.

Q. Approximately how many feet long was that hawser? A. Between 500 and 600 feet.

Q. What was its size? A. 7-inch.

Q. What did you do about getting a bridle for the tow? A. The bridle was there.

Q. The bridle was there? A. Yes.

Q. What kind of a bridle was it?

A. About a $\frac{7}{8}$ steel cable bridle.

Q. How long?

A. Possibly 70 or 75 feet spread.

Q. What was its condition? A. Good.

The COURT.—Did you examine the swivel?

A. Yes, sir, that is a part of my duty.

Q. Was the swivel freely moved?

A. Yes, sir. [148]

(Testimony of Orville Davis.)

Q. It was not frozen in any way?

A. No, sir; if it was I would have noticed it.

Mr. LILLICK.—Q. What was the play in the swivel, in the rivet—do you know? A. I do not.

Q. Do you of your own knowledge know whether it was turning in the shackle?

A. I am sure that it was.

Q. Prior to the “Three Sisters” leaving on that voyage, what, if anything, did you do about inspecting her and her machinery?

A. I always inspect all the boats before they go out on a trip.

Q. Did you inspect her at this time?

A. I am sure I did.

Q. What was her condition? A. First class.

Q. Are you speaking of her generally? Speak of her engines, and then her hull.

A. She had a new engine, in good shape.

Q. How old?

A. Possibly two months or two and a half months, I don’t remember the exact age.

Q. What was her horsepower?

A. 135.

Q. What was the size of the tug?

A. Nearly 60 feet in length and about 17 feet beam.

Q. Whereabouts is the “Three Sisters” now?

A. Out at sea.

Q. When will she be in again? A. To-night.

Mr. LILLICK.—Your Honor, I wonder if we

(Testimony of Orville Davis.)

could arrange to go down there to-morrow morning?

Q. Mr. Davis, how long would it take us to go to where she will be stationed?

A. She will be at Pier 23.

Q. And where is Pier 23?

A. North of the Ferry about a quarter of a mile.

Mr. LILLICK.—I wonder if we cannot arrange that? Would you be willing to have counsel and the Court go down? Would the Court be willing? It would take half an hour, perhaps.

The COURT.—Yes, I will go.

Mr. LILLICK.—Thank you, your Honor. We might arrange the [149] time right now, a time suitable to your Honor, such time as you would fix. The importance of it will be to see the deck. I think that will tell the story.

The COURT.—We will leave here at ten o'clock in the morning, say. Do you think you will finish all the testimony to-day?

Mr. HEIDELBERG.—I certainly hope so, your Honor. I will do everything in my power to finish it to-day.

Mr. LILLICK.—I think we will finish our side very easily. This is practically the last witness we have.

The WITNESS.—Your Honor, may I say a word?

The COURT.—Certainly.

The WITNESS.—I don't know whether I can ar-

(Testimony of Orville Davis.)

range to have her in at ten o'clock to-morrow morning.

Mr. LILLICK.—If she will be in to-night, Mr. Davis, she will have to be held here until to-morrow morning. We will have to make those arrangements.

The COURT.—Q. Is she out fishing? A. Yes.

Q. Is there some other time that would be a more convenient time?

A. She is out on the run every day, your Honor, and we only have two boats now.

Mr. LILLICK.—Well, your Honor, this is a very laudable interest that Mr. Davis has in the business, but I think that we can arrange some other means, even if we have to hire another boat, if necessary.

The COURT.—Q. What time does she come in to-day? A. Between 3:00 and 5:00 o'clock.

Q. You mean in the afternoon? A. Yes.

The COURT.—Couldn't we go this afternoon?

Mr. LILLICK.—I would like very much to go this afternoon, your Honor.

The COURT.—I would just as soon go this afternoon. We will [150] see about going this afternoon.

Mr. LILLICK.—Q. Mr. Davis, what did the engines burn?

A. Twenty-four per cent gravity fuel oil.

Q. Are there any fumes from a fuel oil of that grade? A. No, sir.

Q. Do you know whether Mr. Paladini ever saw this tow-line and bridle? A. I do not.

(Testimony of Orville Davis.)

Q. Whose duty was it to see that this tow-line was good and efficient? A. My duty.

Q. What employee of A. Paladini inspected vessels belonging to the company to pass upon their need for new equipment? A. I did.

Q. How long had Kruger been captain of the "Three Sisters," if you know? A. I do not know.

Q. Do you know how long he worked for you after this accident?

A. Two or three months; I don't remember the length of time.

Q. And during that time, where was he working, where was the vessel operating?

A. I had him fishing part of the time.

Q. And in doing fishing, in what waters would he fish? A. The Pacific Ocean.

Q. What is your own opinion of the competency of Mr. Kruger? A. He is a very good man.

Q. What was the "Corona" used for during the time that this pier was being built up at Point Reyes?

Mr. HEIDELBERG.—That is objected to, your Honor, as immaterial, irrelevant and incompetent, and as having nothing to do with the issues in this case.

The COURT.—Objection overruled.

A. To carry fish from Point Reyes to San Francisco, and the supplies for the pile-driver crew, and water.

Mr. LILLICK.—Q. Who instructed Kruger

(Testimony of Orville Davis.)

about what he was to do when he went up to Point Reyes?

A. I gave him the instructions. [151]

Q. What were your instructions to him on this particular voyage?

A. To go up and get the pile-driver.

Q. Between the 6th of June and the 8th of June, 1923, what, if any, instructions did you give the "Corona" about going up?

A. To bring the men down from Point Reyes when the job was finished.

Q. Mr. Davis, from whom do you obtain your instructions as to what shall be done with the vessels?

A. Well, if I don't know myself I go to A. Paladini.

Q. What is the situation with reference to orders for the four vessels which you are now operating; in other words, where do you obtain your instructions as to what you shall do with those vessels?

A. From the main office.

Q. Have you anything to do individually with where they shall operate? A. No.

Q. You said a moment ago if you didn't know yourself you got your orders from the main office.

A. Yes.

Q. Where does the information or instruction come from that you referred to as that which you know yourself?

A. I couldn't get that question.

Q. Perhaps I am not putting that very clearly.

(Testimony of Orville Davis.)

In order to explain an answer you made a moment ago, you said that when you don't know where they are to go yourself, you ask the main office?

A. Yes.

Q. You exercise no independent judgment, do you, about how the vessel shall operate; you are always acting under the orders from the main office, are you not? A. Yes, sir.

Mr. HEIDELBERG.—That question is slightly leading.

Mr. LILLICK.—I should say that it is very leading, but I am trying to hurry along, and that is my excuse for the question. [152]

Q. And those orders always come from the main office? A. Yes.

The COURT.—Q. Did Mr. Paladini tell you definitely to send the "Three Sisters" after the pile-driver and the "Corona" after the workmen, or was that your own judgment?

A. Your Honor, I didn't quite get that.

Q. You sent the "Three Sisters" after the pile-driver and the barge? A. Yes.

Q. Did Mr. Paladini tell you to do that?

A. Yes.

Q. You told the "Corona" to go up and get the men, did you? A. I did.

Q. Did Mr. Paladini tell you to do that?

A. He did.

Mr. LILLICK.—That is all, your Honor.

(Testimony of Orville Davis.)

Cross-examination.

Mr. HEIDELBERG.—Q. You say you were chief engineer on the “Corona”? A. I was.

Q. Up to what time were you chief engineer on the “Corona”?

A. The exact dates I don’t remember.

Q. When did you enter the employ of the Paladini Co. as port engineer?

A. I don’t remember the exact date.

Q. Your memory is kind of hazy upon when you left the “Corona” as chief engineer?

A. It is.

Q. And it is also hazy as to the time when you entered the employ of A. Paladini & Co. as port engineer; that is true, isn’t it? You don’t remember those things? A. How is that?

Q. You don’t remember when it was that you either left the “Corona” as chief engineer or when you went into the employ of A. Paladini as port engineer?

A. I never did leave the job. I rebuilt the “Corona’s” engine before I went as port engineer.

Q. And you stayed on the “Corona” for a certain length of time; now I ask you, when did you cease to be chief engineer on the [153] “Corona.”

Mr. LILLICK.—Do you mean the date?

Mr. HEIDELBERG.—Yes.

A. I don’t remember the date.

Q. And you don’t remember the date when you

(Testimony of Orville Davis.)

entered the employ of A. Paladini as chief engineer? A. I do not.

Q. Yet you remember you made a thorough inspection of the tow-line and of the bridle used in this particular towage. A. Yes, sir.

Q. You do? A. Yes, sir.

Q. In what month did you make that inspection? A. In June.

Q. What time in June?

A. One morning; the exact date I don't remember.

Q. One morning? A. Yes.

Q. As chief engineer of the "Corona" you only had to do with the running of the "Corona's" engines, didn't you? A. As chief engineer?

Q. Yes. A. Yes, sir.

Q. While you were operating on the "Mississippi" you had nothing to do but steer the boats, had you? A. Yes.

Q. And when you were with Fairbanks-Morse, what experience did you have?

—A. What experience did I have?

Q. Yes, what was your experience, what were your duties with Fairbanks-Morse?

A. To repair and install engines.

Q. Engines? A. Yes.

Q. During that time you never had anything to do with ropes, at all, did you? A. Yes.

Q. How did you have anything to do with ropes around engines?

A. We lift them with ropes occasionally.

(Testimony of Orville Davis.)

Q. Did you do that, or did some contractor do that, or some other man?

A. I did; I ran the gang that did it.

Q. For whom did you run this gang?

A. For the Fairbanks-Morse [154] Company.

Q. How long ago was that?

A. Just before I went to work for Paladini.

Q. That was straight up and down lifting and hoisting, was it? A. Not always.

Q. Did you ever have anything to do with towing when you were with Fairbanks-Morse?

A. No, no towing.

Q. Did you ever have to do any towing when you were on the "Mississippi"? A. Yes.

Q. What did you tow on the "Mississippi"?

A. Coal barges, log rafts.

Q. You were only a pilot on the "Mississippi," were you not? A. I was an engineer, also.

Q. The only experience you have ever had, then, in towing, was on the "Mississippi": Isn't that true? A. No.

Q. Where did you have any more experience?

A. In the San Joaquin River.

Q. In the San Joaquin?

A. Yes, and in the Sacramento.

Q. Did you ever have any experience outside?

A. Yes.

Q. Where?

A. From San Pedro to San Francisco.

Q. What were you doing then?

A. Chief engineer on the motorship "Oronite."

(Testimony of Orville Davis.)

Q. How big a vessel was she? A. 1600 tons.

Q. And you were chief engineer on that vessel, the "Oronite," 1600 tons? A. Yes, sir.

Q. As chief engineer, did you have to do with fixing the tow, or did you have to do with running the engines?

A. I had to do with running the engines.

Q. And running the engines only? A. No.

Q. You were not the only member of the crew of that boat, were you? A. I was.

Q. There was a captain on board, wasn't there?

A. Yes. [155]

Q. And he was in charge of the vessel, presumably, wasn't he? A. He was.

Q. You did not give instructions to the captain, did you? A. No.

Q. Mr. Davis, do you now say you remember having examined this bridle in June of 1923, this particular bridle that was used in towing barge 61 back from Port Reyes?

A. I examine all equipment.

Q. Just answer my question. Do you now remember of your own knowledge having examined this particular bridle and swivel that was used by the "Three Sisters" in towing barge 61 back from Point Reyes on the 8th day of June, 1923?

A. I remember.

Q. And what was the dimension of the steel rope attached to that bridle, or of which the bridle was composed? A. I should judge about $\frac{7}{8}$.

(Testimony of Orville Davis.)

Q. You should judge about $\frac{7}{8}$: Do you know the difference between $\frac{7}{8}$ and $\frac{3}{4}$? A. Yes.

Q. Do you know the difference between a $\frac{7}{8}$ rope and a $\frac{3}{4}$ rope; you say you do?

A. How is that again?

Q. Do you know the difference when you see them, by looking at them, whether or not a steel cable is $\frac{7}{8}$ or whether it is $\frac{3}{4}$ of an inch?

A. That is a very close margin to work on. To get it exactly you would measure it.

Q. Then you mean to say that you cannot tell the difference between a $\frac{7}{8}$ rope and a $\frac{3}{4}$ rope by looking at them, or by feeling them: Is that your testimony?

Mr. LILLICK.—I think the witness has answered the question.

The COURT.—Let him answer it again.

A. You can tell about it, but not exactly, no one can.

Mr. HEIDELBERG.—Q. Then you now give it as your positive testimony that that was a $\frac{7}{8}$ -inch steel cable attached to it, do you?

A. That is my recollection.

Mr. LILLICK.—Now, just a moment. I object to that question, [156] your Honor, because Mr. Heidelberg has put it this way: You now testify that it was a $\frac{7}{8}$ -inch cable. He has not so testified.

The COURT.—He said about $\frac{7}{8}$; he also says that it is hard to tell, and, of course, I know that.

Mr. HEIDELBERG.—Q. What did you do in

(Testimony of Orville Davis.)

examining the bridle and swivel; just tell us what you did?

A. Well, exactly, I cannot remember that far back, but I know I did examine it.

Q. Yet you don't remember what day you examined it? A. Exactly, personally, no.

Q. How many vessels did you have under your supervision during the first week of the month of June, 1923? A. About six, I think.

Q. Did you make any examination of the rest of those during the first seven days of June?

A. Not all of them, some of them were not in.

The COURT.—Q. Was this the only towing that Paladini did about that time?

A. No—yes, I think that was the first, and then afterwards there was a barge towed to Point Reyes.

Q. This particular barge, do you mean, or some other one?

A. Another barge, at just about that same time.

Q. That was a fishing barge, was it?

A. Yes, sir.

Q. The business was not that of towing, generally, was it? A. No, sir.

Q. The business is fishing? A. Yes.

Mr. HEIDELBERG.—Q. Prior to the towing of this barge 61 back from Point Reyes you had not had any experience at all with Paladini in towing, had you? A. Not that I remember of.

Q. You were not port engineer when barge 16 was taken up to Point Reyes, were you? [157]

(Testimony of Orville Davis.)

The COURT.—16 was the fish barge?

Mr. HEIDELBERG.—Yes, that was the fish barge.

A. Yes, I was.

Q. Wasn't that taken up during the month of May, 1923? Don't you remember that?

A. I don't just exactly remember now.

Q. Well, you don't remember, and you would not say that you were port engineer at the time that barge 16 was taken up to Point Reyes, were you? A. Well, I get mixed up with this year.

Q. Yes, I think that is what has happened. Where did you find this swivel? Where was it when you examined it?

A. That I don't remember exactly.

Q. Did you measure the length of this rope when you spread it out, as you say? A. No.

Q. How did you measure it, how did you gage it?

A. By experience from seeing lines before.

Q. Did you stretch it out in one long line, or did you stretch it out and roll it up, or what did you do?

A. No. I took it off the coil. I did it alone. I would take hold of it and carry so much of it out and then go and get so much more.

Q. What did you do with that rope when you got through with it?

A. Left it lying on the dock.

Q. On the dock? A. Yes.

Q. How do you know that that was the rope that was used by the "Three Sisters"? Can you

(Testimony of Orville Davis.)

answer that question? If you cannot answer it just say so. You don't know that it was the rope used, do you? A. Yes, sir.

Q. How do you know it?

A. Because I seen it on the boat before she pulled out.

Q. You saw it on the boat before she pulled out? A. Yes, sir.

Q. Where was it on the boat?

A. Just exactly where I don't [158] remember.

Q. What did you do with the swivel and the bridle after you got through examining it?

A. I didn't do anything with it.

Q. You must have done something with it. You either let it lay on the wharf or you did something with it, didn't you, after you got through examining it? Have you answered the question?

A. I don't remember.

Q. You don't remember. Now, Mr. Davis, let me ask you this question: Did you examine the wire rope of which that bridle was composed?

A. I am sure I did.

Q. Don't you know whether you did, or not?

Mr. LILLICK.—The witness has said he is sure he did.

Mr. HEIDELBERG.—All right, we will take that answer.

Q. What was the condition of that wire rope, as to whether or not it was rusted?

(Testimony of Orville Davis.)

A. Well, I don't think it was rusted, because if it had been I would have noticed it.

Q. Now, Mr. Davis, we don't care what you think at this particular time. Have you any knowledge as to whether or not that wire rope was rusted at that time?

A. Well, I can say that it was not.

Q. You would say that it was not rusted at all, would you? A. Yes.

Q. Was there any oil on the swivel?

A. I don't remember.

Q. You don't remember that, whether there was any oil on the swivel or not?

A. There probably wasn't.

Q. There probably wasn't; but you don't know now of your own knowledge. You don't know of your own knowledge that there was no oil on it?

A. No.

Q. You didn't put any oil on it, did you?

A. I did not.

Q. Wasn't that swivel some rusted?

A. Probably it was colored, but not rusted.

[159]

Q. Did you, Mr. Davis, personally examine the pin in that swivel?

A. I examined the swivel.

Q. You examined the pin in the swivel and you would say that it was not rusted at all?

A. I would say that it was not rusted.

Q. It would turn freely? A. Yes.

(Testimony of Orville Davis.)

Q. And you don't remember what you did with it after you examined it?

A. No. I probably let it lay where I examined it.

Q. Well, how do you know, then, if you let it lay where you examined it, that it was the swivel that was used by the "Three Sisters" in towing the barge down—the swivel and the bridle?

A. How is that?

Q. If you let this lay on the wharf, how do you know it was the particular swivel of the bridle that was used in this tow on June 8, 1923?

A. I have no means of knowing.

The COURT.—Q. At what wharf was it when you examined it? A. 23.

Q. Did you have any other bridle there?

A. Not that I know of.

Mr. HEIDELBERG.—Q. Where did you get this swivel?

A. I didn't get the swivel.

Q. I mean the day that you examined it, where did you get it? A. I didn't get it.

Q. Where did you find it when you examined it? did you find it on the wharf?

A. I would not say exactly.

Q. Don't you remember whether you went aboard the boat and brought it out, or whether somebody placed it on the wharf for you to examine? A. I do not.

Q. You don't remember where you examined it, do you?

(Testimony of Orville Davis.)

A. On Pier 23 or on the boat, probably.

Q. You remember you examined the rope on the pier, don't you? A. Yes. [160]

Q. Or did you examine the rope on the pier?

A. Yes, I examined the rope on the pier.

Q. But you don't remember whether you examined the swivel on the boat or on the wharf?

A. I do not.

Q. Did you know that this same rope, tow-rope and swivel, was used in towing down at Santa Cruz in between the time the tow of barge 61 was made on May 10th and the barge on June 8, 1923? In other words, do you know that that same rope was used in different towing during that same period of time? A. You mean before?

Q. Yes. A. No.

Q. You don't know what happened to that rope in between the time of May 10, 1923, and June 8, 1923, do you?

A. It was on the dock, I think, at Pier 23.

Q. On what date?

A. It was on the dock in June.

Q. What June—June, 1923?

A. June, 1923.

Q. What part of June?

A. The fore part of June.

Q. Are you sure that it was there before the 8th day of June?

A. That is where I got it from when I wanted a tow-line.

(Testimony of Orville Davis.)

Q. Did you have to go get a tow-line for this particular tow?

A. I had to supply the boat with a tow-line.

Q. Wasn't the boat already supplied at that time with the same tow-line that they used the week previously in towing down at Santa Cruz?

A. The tow-line was on the dock.

Q. Then you mean to tell us that you found a tow-line on the dock and not on the boat?

A. The tow-line was on the dock.

Q. You didn't put it on the boat, did you?

A. I don't remember whether I did, or not.

Q. Don't you remember whether you went aboard the "Three Sisters" and got that tow-line, or not? A. No. [161]

Q. Don't you remember that you never even saw this swivel before June 8, 1923?

The COURT.—I think he might be confused about the dates, there. Let me put the question to him this way:

Q. You remember the day the accident happened, that is, you remember that an accident happened, don't you? A. Yes.

Q. The "Three Sisters" came back to port with two wounded men aboard? A. Yes.

Q. A few days before that, you testify that you sent the "Three Sisters" up to bring back the barge. A. Yes.

Q. Did you examine the bridle just before she went out on that last trip to bring back the barge?

A. Yes, sir.

(Testimony of Orville Davis.)

Mr. HEIDELBERG.—Q. You know you did that, and yet you don't know when you became port engineer for A. Paladini & Co.; you don't know that, do you? A. The exact date, no.

Q. What date in June did the "Three Sisters" leave for Point Reyes to bring this barge back?

A. About the 5th or 6th of June, I think, somewhere along in there.

Q. Were you in the courtroom yesterday?

A. Part of the time.

Q. Did you hear Captain Kruger testify that this swivel had been in the hold of this vessel, the "Three Sisters," all the time since he towed the barge up on June 8, 1923? A. How is that?

Q. Did you hear Captain Kruger testify here yesterday that this swivel had been in the hold of the "Three Sisters" from May 10, 1923, to June 8, 1923? A. No, I didn't.

Q. Don't you know that that is the fact?

A. No, I don't.

Q. Don't you know that the only time it was taken out was, as Captain Kruger testified, when he used it to tow once at Santa Cruz?

A. How is that?

Q. Don't you know that this swivel had been in the hold of the [162] vessel "Three Sisters" continuously from May 10, 1923, to June 8, 1923, and that the only time it had been taken out between those two dates was once at Santa Cruz to make a tow down there? Don't you know that?

A. No.

(Testimony of Orville Davis.)

Q. Did you go down into the hold of the "Three Sisters" and drag up that swivel to be examined by you? A. No.

Q. And you did not see anybody else do it, did you? A. Not that I remember.

Q. Where did you find the swivel?

A. I don't remember.

Q. And yet you do remember that you examined it? A. Yes.

Q. And you examined it minutely, carefully?

A. That is my business.

Q. Answer my question. I say do you now remember that you did examine this particular swivel on or before the 5th day of June, 1923, very carefully?

A. I remember of examining the tow-line, the bridle.

Q. How long were the strands on this bridle?

A. How long were the strands?

Q. Yes, how long were the two sides of the rope, this bridle? A. Possibly 30 or 35 feet.

Q. And you say the rope was 600 feet long?

A. As nearly as I can remember between 500 and 600 feet.

Q. Where did you find the bridle?

A. I don't remember where I found the bridle.

Q. Was the bridle connected with the swivel when you found it?

A. Was the bridle connected with the swivel?

Q. Yes. A. It probably was.

Q. It probably was; I am asking you was it.

(Testimony of Orville Davis.)

A. Yes.

Q. It was. How was it attached—by a thimble, or otherwise? A. A thimble.

Q. It was attached by a thimble?

A. It was spliced in with a [163] thimble, in the eye.

Q. What kind of an outfit was this particular swivel? A. Exactly, I don't remember.

Q. You cannot say exactly?

A. Not exactly. It was spliced in. I remember of examining the splices.

Q. Could you go to the blackboard and draw a picture of that particular swivel?

A. No, not exactly.

Q. How many thimbles did it have on the end of this swivel that was nearest the barge that the bridle was attached to?

The COURT.—I don't understand that question.

Mr. HEIDELBERG.—How many thimbles did it have on the end of the swivel nearest the barge and to which this rope forming the bridle was attached?

The COURT.—You are practically asking him how many thimbles it had all together, aren't you?

Mr. HEIDELBERG.—No, I am asking him about this particular end.

The COURT.—Well, I don't understand it. I don't see how there could be any thimbles on any side except on the barge side.

(Testimony of Orville Davis.)

Mr. HEIDELBERG.—That is the very question I am leading up to, your Honor.

The COURT.—All right, go ahead.

Mr. HEIDELBERG.—Q. Were there any thimbles on this swivel on any side except the barge side?

A. I am sure there were thimbles on both sides.

Q. A thimble on both sides?

A. Two on one side and one on the other.

Q. What is the shape of the two on the barge end? A. Exactly, I don't remember that.

Q. You don't remember that?

A. Not exactly, no. [164]

Q. What is the shape of the one that you say was in front?

A. I don't remember the exact shape.

Q. Were they the same, or were they otherwise?

Mr. LILLICK.—Just what do you mean by the shape? A thimble is a thimble.

Mr. HEIDELBERG.—I mean just this: I am not a seafaring man or a seagoing lawyer. I think I know what a thimble is like, though.

Mr. LILLICK.—All right, we will all be glad to be enlightened by you.

Mr. HEIDELBERG.—I think I can make a picture of it so that at least I will understand it when I get through with it.

Q. Look at this. What is that, Mr. Davis? You know that that is the pin, don't you?

A. That is the pin.

(Testimony of Orville Davis.)

Mr. LINGENFELTER.—It looks like a dumb-bell.

Mr. HEIDELBERG.—Now, Mr. Davis, that is a pretty fair picture of a swivel, isn't it? A. No.

Q. I mean just pretty fair. Perhaps a draftsman would say I was a good lawyer. That is the end the ropes were attached to, isn't it? You get some kind of a glimmering of this, don't you, Mr. Witness, from this drawing?

Mr. LILLICK.—I ask that that remark go out, your Honor, as improper.

The COURT.—Counsel is just indulging in a little facetiousness.

Mr. HEIDELBERG.—No, your Honor, I really was in earnest then.

The COURT.—I would not ask him too much about that. I think we have had plenty on that.

Q. Mr. Davis, counsel is asking whether the drawing he is [165] putting on the board is a picture of that swivel.

A. Yes, it has some resemblance.

Mr. HEIDELBERG.—I am getting encouraged.

The COURT.—What is it that you call the thimble?

Mr. HEIDELBERG.—That is what you call the thimble. There is another one in the front.

The COURT.—Q. What is the one in front for?

A. For the rope to go through. It is to keep it from cutting the line.

Mr. LINGENFELTER.—Q. Mr. Davis, you

(Testimony of Orville Davis.)

have one of those bridles down on the wharf now, haven't you? A. Yes.

Q. Is the shackle that is now on that bridle that is on the wharf the same kind of a shackle that was used on this voyage on the 8th of June?

A. How is that?

Q. I say, is the shackle on the bridle that you have now on the wharf the same kind of a shackle that was on the bridle that was used when the barge was towed down from Point Reyes, or is it a different kind? A. They are all the same kind.

Q. Can you bring that bridle into court?

A. Yes.

Mr. HEIDELBERG.—We can see it when we go down there to see the boat.

Q. I believe you testified, Mr. Davis, that you did not know what you did with this swivel after you made your examination of it.

A. I don't remember what I did with it.

Q. Then I ask you again, how is it you know that the swivel you examined was the swivel which was used in the tow from Point Reyes down here on the 8th day of June, 1923. You don't know that it was, do you? A. Well, I have no proof for it.

Q. Did you ever see that swivel afterwards?

A. I did not.

Q. What happened to that tow-rope when the "Three Sisters" brought it in: Did you ever see that afterwards? [166]

A. Yes, the tow-rope was put on the dock.

(Testimony of Orville Davis.)

Q. When; I mean in relation to the accident, when was it?

A. I don't remember just when.

The COURT.—It must have had the swivel attached to it.

Mr. HEIDELBERG.—That is just what I am getting at, may it please the Court.

Q. When was that put on the dock?

A. I don't remember.

Q. You don't remember even whether it was in the month of June, or not, do you?

A. It might have been.

Q. You didn't make any other examinations of that rope during the month of June, did you?

A. Not that I know of.

Q. Did you ever see that rope after June 8, 1923?

A. Yes, sir.

Q. You don't remember when, though?

A. Yes, we had rough weather one night, and I went down and tied up the boats.

Q. And you used the tow-rope to tie up the boats? A. I did.

Q. And at that time it didn't have the parts of the bridle attached to it, yet, did it?

A. I think not.

Q. As port engineer, didn't you ask what had happened to that bridle when the "Three Sisters" came in? A. I don't remember.

Q. You don't remember whether you asked that, or not? A. No.

(Testimony of Orville Davis.)

Q. Didn't you ask what had happened to the swivel? A. No.

Q. Didn't you know you had borrowed that swivel and bridle from Crowley's, and that you had to return it? A. I never borrowed it.

Q. But you knew that it had been borrowed, did you not? A. No.

Q. You were on the "Corona" when she went up to pick up this barge, weren't you?

A. When she went up to pick up the barge, you say?

Q. Yes. A. No.

Q. You were not chief engineer on the "Corona" then? A. No. [167]

Q. How long before that time had you ceased to be chief engineer on the "Corona"?

The COURT.—He has told you a number of times that he cannot remember that; why repeat it?

Mr. HEIDELBERG.—I thought I might help his memory by that, your Honor. I didn't think of the barge incident before. However, I will withdraw the question.

Q. You never had the parts of the swivel attached to that barge after the accident, did you?

A. How is that again?

Q. You never saw the parts of the bridle that were attached to the bits on the barge after the accident, did you? A. I did not.

Q. Didn't you make any inquiry about it?

A. I don't remember.

(Testimony of Orville Davis.)

Q. You were in charge of the equipment of A. Paladini, Inc., at that time, were you not?

A. I was.

Q. Did you not deem it your duty to make inquiry as to what had happened to the bridle on that boat?

Mr. LILLICK.—That is objectionable, your Honor, what he deemed to be his duty is not pertinent here.

The COURT.—Let him answer it.

A. Well, I don't remember whether I did inquire or not.

Mr. HEIDELBERG.—Q. Didn't Crowley make a demand on you later for the production of that bridle and the swivel?

A. I believe he did some time later.

Q. You take your orders from A. Paladini?

A. Yes.

Q. Where does he give you those orders?

A. Up at the market.

Q. Isn't he oftentimes down on the dock?

A. Sometimes.

Q. Quite frequently down on the dock, isn't he?

A. I have seen him there several times.

Q. And he has given you orders around the dock down there? A. I don't remember that he has.

[168]

Q. What examination did A. Paladini give you as to your competency before he hired you as port engineer? A. No examination that I know of.

Q. No examination. You simply resigned your

(Testimony of Orville Davis.)

position, or were transferred, from chief engineer of the "Corona" to that of port engineer: Is that true? A. No.

Q. Did you resign?

A. No, I did not resign. I rebuilt the engines of the "Corona," and the chief was aboard, and from there I went as port engineer.

Q. That is what I was asking you, Mr. Davis. In other words, you just transferred from being chief engineer of the "Corona" to that of port engineer? A. Yes, sir.

Q. You never had had any experience with A. Paladini, Inc., other than your work on the "Corona"?

A. Well, I did a job on the "Corona" one time before.

Q. That was a rebuilding job of the machinery?

A. No, that was truing up a crank pin that was burned out.

Q. It was a mechanical job? A. Yes.

Q. So that save and except the work you had done on the "Corona," you had never had any other experience in your employment with A. Paladini?

The COURT.—Q. Can you get that bridle and bring it out here by two o'clock? A. Yes, sir.

The COURT.—We will take our recess now until two o'clock.

(A recess was here taken until two o'clock P. M.)

AFTERNOON SESSION.

ORVILLE DAVIS, cross-examination (re-sumed).

Mr. HEIDELBERG.—Mr. Reporter, will you read the last question?

(Question read by the reporter.)

A. No.

Q. You were not always down at the dock, were you, Mr. Davis, when these boats came in?

A. No.

Q. You were not present at the time the "Three Sisters" came in after this voyage, were you—I mean, down at the dock?

A. I went down that night.

Q. You went down that night? A. Yes, sir.

Q. Did you go aboard the "Three Sisters" that night? A. I did.

Q. Did you make an examination of the towing apparatus there on that boat that night?

A. I did not.

Q. You knew that owing to the breaking of this towing apparatus there had been a serious accident, did you not? A. I did.

Q. You were in charge of the equipment for A. Paladini, were you not? A. I was.

Q. And you say you made an inspection of that equipment three or four days prior to that time, did you not? A. I did.

Q. Were you not somewhat interested in finding out how the equipment had broken?

A. At that time I was interested in getting the barge back, sending a towboat out after her.

(Testimony of Orville Davis.)

Q. Did you send a towboat out to get the barge?

A. The "Corona" came in in the meantime and they had taken the barge in tow.

Q. Where had the "Corona" been before that?

A. She was on her way up to Point Reyes.

Q. Didn't she continue on her way up to Point Reyes? [170] A. I think not.

Q. Is it not a fact that the "Corona" continued on her way to Point Reyes on that particular voyage, and picked up the barge and brought her back?

A. All I know is she picked up the barge.

Q. You don't now say that you instructed the "Corona" to go up there and pick up the barge, do you?

A. No.

The COURT.—He didn't say anything like that.

Mr. HEIDELBERG.—He just said he instructed the towboat to go out and get the barge.

The COURT.—No, he didn't. He said he went down to see about getting a towboat to get the barge, but in the meantime the "Corona" came in with the barge. He didn't say he sent a towboat after the barge.

Mr. HEIDELBERG.—Q. When you went down to see about getting a towboat to get the barge, what time was that? A. I don't know.

Q. Was it night-time? A. Yes, sir.

Q. What time did the "Corona" get in with this barge?

A. She didn't tow the barge into Frisco.

Q. Did you find out when you were down there

(Testimony of Orville Davis.)

that the "Corona" was up at Point Reyes and was to get the barge?

A. What is that again, please?

Q. Did you find out when you went down to the "Three Sisters" that the "Corona" was on her way up to take charge of the barge? A. I did not.

Q. Did you have any talk with Captain Kruger on the night of June 8 on board the "Three Sisters"? A. I don't remember any talk.

Q. Did you go aboard the "Three Sisters" on the night of June 8th? A. I did.

Q. Did you see Captain Kruger on the night of June 8th, 1923? [171] A. I did.

Q. Did not Captain Kruger at that time tell you that the "Corona" was going to bring the barge back? A. No.

Q. Did you ask him anything about what had happened to the barge?

A. He told me she was floating out at sea.

Q. Didn't he tell you at the same time the "Corona" was going to bring her in? A. No.

Q. Didn't he tell you that they had a conversation with the Captain of the "Corona" as they passed, and that he had made arrangements for having the barge brought back? A. No.

Q. And you didn't ask Captain Kruger anything about how the accident happened?

A. Not at that time.

Q. And you didn't make any inspection of the apparatus, at all? A. Yes, sir.

Q. What did you inspect?

(Testimony of Orville Davis.)

A. I went down to the engine-room and looked over the engine.

Q. I mean of the towing apparatus, in particular. A. I never inspected the towing apparatus.

Q. And yet you knew there had been an accident by reason of the breaking of that towing apparatus? A. Someone telephoned to me.

Q. And you knew it when you got aboard the "Three Sisters," didn't you? A. Yes, sir.

Q. Now, Mr. Davis, you say you issued instructions to the "Corona" to go up there and get these passengers on Saturday, June 8th.

A. Yes, sir.

Q. What other duties did she have at that time?

A. To bring down fish.

Q. How is it that you gave instructions to the "Corona" to go up there on June 8th and bring down these passengers when you [172] knew that the "Three Sisters" was already up there?

A. The "Three Sisters" went after the barge.

Q. The "Three Sisters" had previous to that time, to your knowledge, carried these passengers back and forth, had she not? A. No, sir.

Q. Do you now say that she never did?

A. Not that I know of.

Q. Don't you know that at three different times the "Three Sisters" took these men up to Point Reyes? A. No, sir.

Q. And on three different occasions brought them back? A. I do not.

(Testimony of Orville Davis.)

Q. How long had you been port engineer up to the time of this accident and you didn't know that?

A. The exact time I don't remember; it was just a short time.

Q. Did you ever issue any instructions to Captain Kruger that he was not to carry passengers on the "Three Sisters" at all?

A. That he was not to carry passengers?

Q. Yes.

A. No, I don't think I told him not to.

Q. Didn't you know that the standing order was that whenever the "Three Sisters" was at Point Reyes, or at San Francisco, and the men wanted to be transferred either way, that he was to take them or bring them? A. Again, please?

Q. Didn't you know there was a standing order out to the effect that if the "Three Sisters" was in San Francisco or at Point Reyes at any time when these pile-drivers wanted to go back or forth to San Francisco or to Point Reyes, that the "Three Sisters" was to carry them? A. No, sir.

Q. You never countermanded such order as that, did you? A. Nobody gives those orders but me.

Q. There had been a port engineer prior to the time that you were appointed engineer, had there not, namely, Captain Carlton? [173] A. Yes.

Q. You didn't know anything about the orders that he had issued, did you? A. No, I didn't.

Q. And you never countermanded any of his orders, did you?

(Testimony of Orville Davis.)

A. How could I, when I knew nothing about his orders?

Q. You never had any conversation with Captain Kruger that he was not to bring down these men, had you? A. No.

Q. What were your exact words to Captain Kruger when you sent him up there on or about June 5, 1923?

A. As nearly as I can remember I told him to go and get the pile-driver at Point Reyes, and there was something said about the men up there, and their baggage, and I said, "They can come down on the 'Corona' as usual."

Q. As usual? A. Yes, sir.

Q. Why did you say "as usual"?

A. Because they had been coming down on the "Corona."

Q. Had they been coming down on the "Corona" any more times than they had come down on the "Three Sisters"?

A. I don't know of their coming down on the "Three Sisters."

Q. Don't you know now that they did come back on the "Three Sisters"? A. No, I don't.

Q. Weren't you on the "Corona" at various times when you went up there and got those men?

A. No, sir.

Q. Where were you at the time?

A. I had a shop and I was probably in the shop.

Q. When you said "as usual," you didn't mean that, did you? You meant just according to your

(Testimony of Orville Davis.)

understanding of the situation. You don't mean to say it was the usual situation that these men always went back and forth on the "Corona," do you? A. I think that they always did. [174]

Q. Yes, that is according to what you thought. What is the cubic space in the forecabin of the "Three Sisters"? A. I have not measured it.

Q. What is it in the galley?

A. I have not measured it.

Q. How big a space has the "Three Sisters" in the forecabin? In other words, how many people would it accommodate?

A. She sleeps four. Probably eight men could sit in there all right.

Q. On the "Three Sisters"?

A. On the "Three Sisters."

Q. And the galley would accommodate how many? A. Probably four in the galley.

Q. What did they have in this galley at that time, June 8, 1923? A. The usual equipment.

Q. And what is that?

A. A stove, cooking utensils.

Q. And you still say there was room for four men in there? A. Yes.

Q. How much clearance was there on the bow of the "Three Sisters," from the water, in front of the companionway that leads down, or about at the companionway? What was the water clearance there; how high did the "Three Sisters" stand above the water at the bow just about opposite the companionway, there?

(Testimony of Orville Davis.)

A. Just what part of the "Three Sisters"?

Q. Just about opposite the companionway, in front.

A. Taking it over all?

Q. Yes, the rail and everything.

A. Probably 22 or 23 feet.

Q. Above the water?

A. Do you mean the freeboard?

Q. Yes.

A. I don't just get exactly what you do mean.

Q. To put it in very plain language, I mean how high above the water was the top of the rail in the bow of the "Three Sisters" just about opposite the companionway? A. 4½ or 5 feet. [175]

Q. It does not take much of a wave to wash over that, does it? A. It takes quite a good wave.

Q. Spray would fly over it very easily, wouldn't it?

A. It is according to what kind of weather you have.

Q. What is the gross tonnage of the "Three Sisters"?

A. I would guess about 21 or 22.

Q. You say you would guess? A. Yes.

Q. 21 or 22?

Mr. LINGENFELDER.—Mr. Heidelberg, we are endeavoring to get a copy of the registry.

Mr. HEIDELBERG.—I want to show the acquaintanceship with it of this man. I don't care what it actually is. I want to know what he says it is.

(Testimony of Orville Davis.)

Q. You would say it is about 21 or 22 tons?

A. Yes, about that.

Q. What is the net tonnage?

A. About 10 or 12; about 12.

Q. Has the "Corona" any certificate of inspection for carrying passengers?

Mr. LILLICK.—We are not concerned with that, your Honor, except as it might go to the credibility of this witness. It doesn't make any difference whether the "Corona" carried passengers, or not, we are concerned with the "Three Sisters."

The COURT.—What difference does that make, Mr. Heidelberg?

Mr. HEIDELBERG.—I will withdraw the question.

Q. What is the gross measurement tonnage of the "Three Sisters"?

Mr. LINGENFELTER. He has answered that question.

Mr. HEIDELBERG.—No, he has not.

A. About 21 or 22, so far as I know.

Q. It would be the same as the gross tonnage; is there any difference between the gross measurement tonnage and the gross tonnage?

A. I never heard of measurement tonnage.

[176]

Q. Have you ever seen a certificate of inspection for the "Three Sisters"? A. I have.

Q. Where is that certificate now?

A. It is on the boat.

Q. What does it say, if you know?

(Testimony of Orville Davis.)

A. I don't know exactly; no.

Q. When did you see it last?

A. Probably five or six months ago.

Q. She never has been inspected for carrying passengers, has she, to your knowledge? A. No.

Q. She has no equipment for carrying passengers?

A. She has equipment to take care of a fishing crew. She is a fully equipped fishing boat, according to law.

Q. But only for fishing?

A. She is a fishing boat.

Q. She is not a towboat?

A. A fishing boat tows at times.

Mr. HEIDELBERG.—I think that is all.

Redirect Examination.

Mr. LILLICK.—Q. When you saw the bridle that was taken by the "Three Sisters" when she went up to bring the barge back, did A. Paladini, Inc., have any other bridle?

A. No, sir, not that I know of.

Q. This was a borrowed bridle?

A. So I understand.

Q. And the bridle that you did inspect that you have testified to was the only bridle that A. Paladini, Inc., had down at the dock at that time, was it?

A. It was the only one I know of.

Q. So that if you made an inspection of a bridle at that time, it was the bridle which the "Three Sisters" took up, wasn't it?

(Testimony of Orville Davis.)

Mr. HEIDELBERG.—I object to that as calling for the conclusion and opinion of the witness.

Mr. LILLICK.—I will withdraw the question.

Q. When you went down to the “Three Sisters” upon her return that evening, when the men were brought in, what condition did you find the engines in?

A. I never give them a thorough [177] examination until a few days later, but I found a pin out of the governor.

Q. What was that caused by, if you know?

A. Well, probably the overspeeding of the engine.

Q. Do you know whether or not the engine’s pistons were frozen?

A. When I got around to the back and opened up the base plate, I found that three pistons had been scoured.

Q. And that scouring could have been done by what?

A. Overloading the engines.

Q. And by “overloading,” what do you mean?

A. Too much engine speed.

Q. Will an engine of that type of vessel act as a gas engine does in an automobile where when the engine is new, if you speed it you will be liable to freeze the piston?

A. Much more so.

Q. You say much more so?

A. Yes.

Q. And it is for the same reason that in automobiles a new automobile is run at a low rate of speed until thoroughly broken in: Is that true?

A. Yes, sir.

Q. I call your attention to the bridle that is here

(Testimony of Orville Davis.)

in court, and ask you whether the thimble, the shackle, and what we have been terming the swivel is of the type that was used by the "Three Sisters" on this occasion? A. Partly so.

Q. Will you explain what difference, if any, there is in this one that is in court here today?

A. Instead of having the shackle here you had a thimble and your rope spliced into the thimble.

The COURT.—Q. That is, the ends of this iron cable were fitted into a thimble?

A. The iron cable was fitted like this is, but she didn't have a shackle here; she had a thimble like this, only that it was larger, and it was in here.

Mr. LILLICK.—Q. Mr. Davis, I am told that the record, [178] that is, the testimony here, so far as we have gone, indicates that where the bridle is connected with the swivel there were not two eyes on the cables attached to it; in other words, that the bridle, itself, ran through a link. What was the situation on the bridle that the "Three Sisters" used: Was it attached in the way this bridle is, which is here in court? A. Like that.

Q. Like this? A. Yes.

Q. So that the bridle on the "Three Sisters" was not a bridle that was made by having a 75-foot wire rope with a link over that one rope?

A. No, sir.

Q. In other words, each side of the bridle was attached to the swivel by a separate eye?

A. Yes, sir.

(Testimony of Orville Davis.)

The COURT.—Does anybody know where these two steel cables broke? Is there any evidence of that anywhere?

Mr. HEIDELBERG.—Not so far, your Honor, but I think we will be able to supply some information as to that; some of our men were looking at it, and they can tell what appeared to them to be the situation.

Mr. LILLICK.—Q. Were you port engineer at the time you made the inspection of the bridle at the time when the “Three Sisters” went up?

A. Yes, sir.

Q. Who hires the captains who operate the fishing vessels that A. Paladini, Inc., owns?

A. A. Paladini.

Q. My attention has been called to the fact that there is no testimony by you with reference to Captain Kruger having been told to go up to the pier and bring back the pile-driver; who ordered him to do that? A. I did.

The COURT.—I think he has testified to that.

Mr. LILLICK.—I thought that had been gone into, too, your Honor.

Q. Was there any general order given by you to Kruger to bring [179] the men down when the “Corona” was not there? A. No, sir.

Mr. LILLICK.—That is all.

Recross-examination.

Mr. HEIDELBERG.—Q. Captain Davis, will you step down here, please. I want to be perfectly

(Testimony of Orville Davis.)

clear in this matter. This is what you call the shackle, is it? A. Yes.

Q. You have testified, I believe, that the difference between this swivel and the swivel that was used was the fact that they had a thimble attached to this end? A. Yes, sir.

Q. Attached to this shackle ?

A. No, attached to the swivel.

Q. Attached to the swivel in place of the shackle?

A. Yes.

Q. Is that the only difference between the swivel that is here before you now and the swivel that was used and that you inspected? If there is any other difference, point it out, please.

A. Well, I think it was a larger and a better shackle.

Q. It was a larger and a better shackle; you mean by that the swivel? A. The swivel.

Q. But you cannot see any other difference at all in this swivel with the exception that in place of the shackle they had a thimble, and that the other was a larger and better one than this?

A. This is not a standard equipment.

Q. I am not asking you that. I am asking you what is the difference between this one and the one you inspected.

A. It had a thimble in the eye of the swivel, instead of the shackle.

Q. And that is the only difference between the construction of this swivel and the one that you inspected? A. Yes.

(Testimony of Orville Davis.)

Q. Now, let me ask you if it is not a fact that you did not make a minute and a careful examination of that other swivel?

A. I am sure that I did. [180]

Q. But you now give it as your testimony that the only difference between that swivel and this swivel is the fact that that swivel was probably a larger swivel than this, and that it had a thimble instead of the shackle? A. As far as I know.

Q. As far as you know. You looked at both of them. You inspected the other one, didn't you?

A. But that has been a long time ago.

Q. But you thoroughly inspected it at that time, and you knew the exact condition of it, didn't you?

A. The other one was standard construction.

Q. What is the difference between standard construction and this?

A. The shackle on the other one and the thimble.

Q. That is the only difference you know of, the fact that it had a thimble instead of a shackle?

A. As far as I know.

Mr. HEIDELBERG.—That is all.

Mr. LILLICK.—Q. How about the rust that we see here and the indication of rust on the swivel; I don't know whether there is anything in counsel's examination of you that would need to be pointed out, but are you testifying that this bridle here that we have before us is the same as the bridle that you saw on that occasion, with the same amount of rust upon it?

(Testimony of Orville Davis.)

Mr. HEIDELBERG.—Oh, I didn't intend anything like that at all.

Mr. LILLICK.—There is no point made about the rust on it?

Mr. HEIDELBERG.—No.

Mr. LILLICK.—This swivel was just picked up down there and brought into court to illustrate this matter.

The COURT.—Q. Has that swivel been galvanized? A. Yes, sir.

Q. It has been? A. Yes.

Mr. LILLICK.—Q. Do you know whether the swivel on the "Three Sisters" had been galvanized?

A. Yes, sir.

Q. Galvanizing is for the purpose of keeping off rust, is it? [181] A. Yes, sir.

Mr. LILLICK.—That is all.

TESTIMONY OF ALEXANDER PALADINI,
FOR PETITIONER.

ALEXANDER PALADINI, called for the petitioner, sworn.

Mr. LILLICK.—Mr. Paladini, what is your connection with A. Paladini, Inc.?

A. President.

Q. Have you any other office besides that of president of the company? A. How is that?

Q. I say, have you any other office besides that of president of the company?

A. Yes, general manager.

(Testimony of Alexander Paladini.)

Q. How many directors are there of A. Paladini, Inc.? A. Seven, I think.

Q. Who are they?

A. Myself; Attilio Paladini; Walter Paladini; Hugh Paladini; Henrietta Paladini; Joseph Chicca, who is the secretary.

Q. Which of those directors have any position with the company requiring them to be at the office or offices of the company? A. I don't get you.

Q. Which of those directors has any position with the company requiring them to be at the office or offices of the company; which of them take an active part in the business?

A. All of them are taking an active part in the business outside of Henrietta Paladini and Hugo Paladini.

Q. What positions do they occupy, I mean the others?

A. My brother Attilio is manager of the Oakland Branch; Walter is with me in the wholesale house; Mr. Chicca is secretary. That is about all. I am the president.

Q. What have they to do with the actual operation of the vessels, the equipment of the vessels, the running of the vessels?

A. Nothing, whatsoever. [182]

Q. How do the vessels obtain their orders, as to what to do and where to go?

A. Through Mr. Davis, the port engineer.

Q. What does that port engineer actually do?

(Testimony of Alexander Paladini.)

A. The port engineer comes to my market every morning and asks me, or, if I am not there he may ask my brother, if I happen to be out of town, if there are any instructions to be had, and if so we give them to him, and he, in turn, carries them out.

Q. What do you mean by instructions, what kind of instructions?

A. If I have fish at Point Reyes, and I get a telephone from my place up there that there are fish up there, we will tell him to get the boat ready and send it out and pick up the salmon at Point Reyes.

Q. What do you do, or what do any of the directors do, about seeing to it personally whether the boat is properly equipped to do that work?

A. Nobody does that outside of myself. Mr. Davis takes care of my boats, and if any new equipment is necessary I tell him to go and get it, to keep them in running condition.

Q. How many vessels did you own in May and June, 1923?

A. Four large boats in San Francisco.

Q. What were they?

A. The "Iolanda," the "Henrietta," the "Corona" and the "Three Sisters."

Q. Who was your port engineer in June, 1923?

A. Mr. Davis.

Q. Who was your port engineer in May, 1923?

A. Mr. Carlton.

Q. How long had Mr. Carlton worked for you?

A. About two years.

(Testimony of Alexander Paladini.)

Prior to that do you know what he did?

A. Yes; all the wholesale dealers were pooling on their fishing; it was called the Associated Trawling Co.; they went out from Meiggs Wharf; there were three or four port engineers taking care of twelve boats. Finally, that disbanded, and we all took our boats [183] back again, and each company took a port engineer; I took Mr. Carlton.

Q. How long had Mr. Carlton been with the Associated Trawling Co.?

A. I should judge a year and a half, or something like that.

Q. Did you know anything about his work while he was port engineer of the Associated Trawling Co., how he did it, whether he did it well or ill?

A. Yes, my understanding is that he did it very well.

Q. Who employed the captains for the boats?

A. I do, with the assistance of my port engineer.

Q. How did you select Kruger?

A. Kruger was brought to me by my port engineer, Mr. Carlton; he told me we needed another captain. He said, "What do you think about Mr. Kruger?" I said Mr. Kruger was working for the Associated Trawling Co. for F. E. Booth, and as I understand it he has a wonderful reputation. I spoke to Mr. Booth one day. I said to him, "I contemplate giving Mr. Kruger a job as captain of one of my boats, what do you think about him?" He said, "He is one of my pet men, he is on the job all the time, never misses a day, I hate to see him

(Testimony of Alexander Paladini.)

go." So I told Mr. Carlton to go back and hire him, that he was all right.

Q. Who hired the crews for the boats?

A. I hired the head fisherman and my head fisherman hires the other fishermen. We have a head fisherman who directs the captain to take him to certain fishing grounds; he hires the fishermen under him. I look out for the head man; the men under him are taken care of by the head fisherman.

Q. That has to do with the head fisherman; who took care of the employment of the deck hands, such as Anderson, who was the deck hand on the "Three Sisters"? A. The port engineer. [184]

Q. Who did you deal with at the Healy-Tibbitts Construction Co. when you entered into this contract with them under which they drove the piles for your pier at Point Reyes?

A. Myself personally nobody; I had Mr. Del Savaro. I told him I was about to build a wharf at Point Reyes, and could he help me out. He said yes, he could, that he would go out and get figures for me and bring them in. So he went out, and he came and told me that Healy-Tibbitts & Co. were the most responsible people, and could put up the job in the shortest time, and so I said, "All right, if their prices are right I will give it to them." So the contract was drawn up and I signed it.

Q. Who furnished the barge? A. I did.

Q. Who furnished the pile-driver?

A. Healy-Tibbitts.

(Testimony of Alexander Paladini.)

Q. Who furnished the men who worked the pile-driver? A. Healy-Tibbitts.

Q. Did you have anything to do with the hiring or discharging of those men?

A. They were supposed to complete the wharf for a certain sum of money.

Q. Did you have anything to do with taking the men up or bringing the men back, in so far as your contract with the Healy-Tibbitts Construction Co. went? A. No, sir.

Q. Did you know anything about the men being brought back and forth to and from the pier?

A. No. The only thing I know is that Mr. Davis came to me one day and he made the point that the men would like to come back to San Francisco weekends, or something like that. I said, "Well, we have the 'Corona,' any time they want to go up or come down they could use the 'Corona.'" That is all I said to him with regard to bringing any men up or bringing any men back.

Q. Was any charge made for bringing them back and forth?

A. No, there was no charge for that. We did that more as an [185] accommodation.

Q. As an accommodation to Healy-Tibbitts, or to the men, themselves?

A. Well, if we didn't take them back they would have to go to Inverness and grab the stage, or something like that; they would have to walk about 20 miles.

(Testimony of Alexander Paladini.)

Q. Did your boats bring back anyone as a matter of accommodation from the pier other than these men?

Mr. HEIDELBERG.—That is objected to as entirely immaterial, irrelevant and incompetent.

Mr. LILLICK.—I withdraw it. All of it is immaterial, as a matter of fact. Had you or I been up there and had asked to get a ride it would have been given.

Q. While the pier was being built, Mr. Paladini, did you visit it at any time? A. I did.

Q. How did you go up?

A. I went up with Mr. Del Savaro once or twice, I cannot remember just exactly which it was, it was once or twice.

Q. Did you go up by water?

A. No, by machine.

Q. Were you at any time aboard the pile-driver, or the barge, while that work was going on?

Mr. HEIDELBERG.—That is objected to as immaterial, irrelevant and incompetent.

Mr. LILLICK.—Perhaps it is.

Q. Did you know anything about the equipment with which the barge was taken up, the pile-driver?

A. No, sir.

Q. Did you know anything about the equipment with which it was brought back? A. No, sir.

Q. Did you have anything to do with that at all?

A. No, sir. All I did was to tell my port engineer that we had to tow a barge from San Francisco to Point Reyes and back again, and to make the neces-

(Testimony of Alexander Paladini.)

sary arrangements to have the barge brought [186] up there and back again.

Q. I was referring in my question to equipment.

A. No, sir.

Q. You did tell your port engineer to send it up and bring it back? A. Yes, sir.

Q. Was anything said at that time about the "Three Sisters" bringing back the men?

A. No, sir.

Q. Did you give any instructions with reference to the "Three Sisters" carrying the men?

A. No, sir.

Q. How did you hire Mr. Davis; what did you know about Mr. Davis when you hired him?

A. Mr. Davis came to me and asked me if he could have a job as an engineer. I told him I would see. I went down and I spoke to Mr. Carlton, and I says, the engineer that he had on the "Corona" was not very satisfactory, and I think he was leaving—I think that was it, or something like that; I says, "Mr. Davis, I knew he worked on the 'Corona' once before from the Fairbanks-Morse people, and he helped to build the engine up." I also spoke to Mr. Cooper, of the Peterson Launch and Towboat Co., and asked him if he knew anything about Mr. Davis, and he told me that for a Diesel boat he was about the best man I could find. So on that recommendation I hired him.

Q. How many of those four boats were Diesel boats?

(Testimony of Alexander Paladini.)

A. There were two Diesel engines on the "Corona," and one on the "Three Sisters."

The COURT.—Q. The "Corona" was the larger boat, was it?

A. Yes, sir, it was one of the sub-chasters; it was 110 feet long.

Mr. LILLICK.—Q. Did you have any personal knowledge of the condition of either the bridle or the tow-line that was used? A. No, sir.

Q. Did you have any immediate control of the vessel, itself, [187] on the trip? A. No, sir.

Q. Did you personally have anything to do with the outfitting of the "Three Sisters"?

A. No, sir.

Q. Did you have anything to do with the choosing of the bridle that was put on the tow-line?

A. No, sir.

Q. How, if at all, would you, as president of the company, hear of the need of a new tow-line?

A. That was the instruction given to my port engineer—anything that was necessary, to get anything at all for the maintaining and upkeeping of those boats, for him to go and get it.

Q. Would he ever report the need of any particular thing to you?

A. Well, if it was something that amounted to lots of money he would, but small things like that—a tow-line, or ropes, or anything like them—he had orders to go and get them.

Q. How about authority to purchase such a thing

(Testimony of Alexander Paladini.)

as a bridle without referring it to you—would he have such authority?

A. Oh, yes. We give him an order blank, and everything he purchases he puts down on the order blank and turns a duplicate copy in to the office and states what it is for.

Q. Had Kruger, or Carlton, or Davis, any one of them, ever reported to you or to your office, to your knowledge, that the tow-line or the bridle the "Three Sisters" was using was inefficient?

A. No, sir.

Q. In the course of the business, who would report to you the need of a new tow-line, if you had needed one?

A. Mr. Davis, the port engineer—whoever was port engineer at the time.

Q. The directors whom you mentioned as not having anything to do with the office work, did they have anything to do with the vessels?

A. No, sir.

Q. Did any of the other officers have anything to do with the vessels?

A. No, sir. If I happened to be out of town and my [188] brother was there, if he had any instructions he would tell the port engineer in the morning what instructions he had, the same as I would, in case I happened to be out of town.

Q. Which brother is that? A. Walter.

Q. And would those instructions cover anything other than to send a vessel here or send a vessel

(Testimony of Alexander Paladini.)

there, or to go here for fish, or to go there for fish?

A. No. We have two fishing boats. They go fishing every day but Saturday. Those boats are out every day but Saturday. All Mr. Davis has to do with those boats is to see that they are kept up, and to buy whatever equipment is necessary for fishing. Then we have another boat that goes to pick up the fish, up at Point Reyes or at Bodega Bay. If the boats are out they will ring us up that they are in and have some fish. Mr. Davis passes out the word to go to Point Reyes, or to Bodega Bay, or to wherever it may be, and bring the catch in that night.

Q. Does A. Paladini, Inc., buy fish from other fishermen? A. Yes.

Q. What proportion of the fish that you wholesale do you catch and bring in yourself?

Mr. HEIDELBERG.—I cannot see the materiality of that, your Honor.

Mr. LILLICK.—The materiality of it is very plain. We are trying to convince the Court, and counsel on the other side, that this operation of the vessels was a very small part of the business of A. Paladini, Inc., wholesale fishermen.

Mr. HEIDELBERG.—It happens to be a very important part in this instance.

Mr. LILLICK.—Then you should not object to it.

The COURT.—I will let him answer it.

(Testimony of Alexander Paladini.)

A. About 20 or 25 per cent. [189]

Mr. LILLICK.—That is all.

Cross-examination.

Mr. HEIDELBERG.—Q. You say, Mr. Paladini, that Mr. Davis came to you and stated that the men wanted to come back and forth week-ends.

A. He told me that somebody came to him asking that the men at Point Reyes want to come down. I said "If they want to come down you have the 'Corona' there and they can use the 'Corona.' "

Q. I understand you to say that that was the first you knew of the men wanting to come down for week-ends, that it was when Mr. Davis reported it to you: Is that true? A. Exactly.

Q. When was that reported to you?

A. After the work was being erected—after the piling was being driven down.

Q. Don't you know, as a matter of fact, that the men did not come back from Point Reyes at all after June 8th, when Mr. Davis was appointed your port engineer, that they only came down once, and that was the final trip?

A. I don't know whether they did, or not. He came to me and asked me about the men coming down, and I said, "If they want to come down you have the 'Corona' there and bring them down."

Q. Your words were that he came to you and said the men wanted to come down for week-ends: Isn't that true?

(Testimony of Alexander Paladini.)

A. I don't know whether he used the words "week-ends," or not.

Q. That is what you said.

A. I may have said that, but he said they wanted to come down, and I said the "Corona" is there and they can come down on the "Corona."

Q. When did that conversation take place?

A. When?

Q. Yes. A. In my market.

Q. I say when did it take place?

A. Toward the end of the job.

Q. When did you hire Mr. Davis as your port engineer?

A. I do not know. I would have to look at my records to find out. [190]

Q. It was the 1st of June, wasn't it?

A. I don't exactly remember just what date it was; it was around that time, somewhere around there.

Q. How long had Mr. Davis been your port engineer up to the time of this accident?

A. Not very long.

Q. Less than a week, wasn't it?

A. Maybe a week or two. If you want me to confine me to just how long I will have to get my books to tell you.

Q. Is it not a fact that Mr. Carlton left your employ as port engineer on the last day of May, 1923? A. He may have.

Q. And that Mr. Davis succeeded him?

A. Yes.

(Testimony of Alexander Paladini.)

Q. And so you say now it was Mr. Davis that came to you and told you how the men wanted to come back and forth at week-ends?

A. I don't know just exactly whether it was week-ends, or whether they said they wanted to come back. I remember telling him if they wanted to come back they could use the "Corona."

Q. Didn't you know, as a matter of fact, the "Three Sisters" had been taking them up there and bringing them back? A. No, sir.

Q. Didn't Mr. Martin Brown telephone you and tell you you would have to furnish transportation for these men? A. No, sir.

Q. Wasn't it ever reported to you that Martin Brown insisted on transportation for these men?

A. No, sir.

Q. Are you sure now, Mr. Paladini?

A. My agreement with the Healy-Tibbitts Construction Co. never mentioned anything about transporting the men.

Q. Let me ask you if it is not a fact, Mr. Paladini, that Mr. Martin Brown telephoned you and told you that the men would not leave at three o'clock in the morning when the barge was towed up, and that you had to take them up on another boat, and that as a result of that you sent the "Corona" back after she towed [191] the "Three Sisters" out a little way with this barge, you sent the "Corona" back and picked up these men at the wharf at about six o'clock in the morning?

A. No, sir.

(Testimony of Alexander Paladini.)

Q. Is it not a fact that Martin Brown had that conversation with you and told you the men refused to go out at three o'clock in the morning?

A. No, sir.

Q. How was it that the "Corona," after towing the "Three Sisters" and this barge out came back and picked up the men at about six o'clock in the morning?

A. The reason they came back, as I understand it, is they were towing the barge out in tandem, and they encountered a heavy sea outside, and they didn't need two boats to tow the barge up, and the "Corona" turned back.

Q. Then what did the "Corona" do?

A. I don't know.

Q. Don't you know the "Corona" came back to the wharf to take those men up there?

A. No, sir.

Q. And don't you know that that was by appointment? A. No, sir.

Q. Don't you know that Mr. Carlson absolutely refused, on behalf of himself and his gang, to go up at three o'clock in the morning, and that as a result of that you sent this boat back at six o'clock to meet them? A. No, sir.

Q. And don't you know further that the "Three Sisters" brought these men up there on three different occasions and brought them back on two different occasions during the construction of this work? A. No, sir.

Q. You never issued any orders to the effect

(Testimony of Alexander Paladini.)

that these men were not to ride on the "Three Sisters," did you?

A. I didn't issue any orders.

Q. And you know that the "Three Sisters" did take water and supplies up to them, don't you?

A. I know that one of our boats was taking water up there; whether it was the "Corona" or the "Three Sisters," I don't know. [192]

Q. You know that both of those boats were assigned to taking care of these men, don't you?

A. At that time of the year our salmon season starts, and we have a station at Point Reyes, and also we have a place at Bodega Bay, and we are running up there every day.

Q. You do know, as a matter of fact, that both the "Corona" and the "Three Sisters" were running back and forth between Point Reyes and San Francisco, don't you?

A. There is no argument about that.

Q. And that they were taking supplies up to these men, and you know that materials were being transported up there by those boats: You know that, don't you?

A. That part of it is all right.

Q. You didn't make any investigation of Mr. Davis other than just what you have stated, did you? A. I thought that was enough.

Q. Didn't you have any other tow-lines or bridles on the morning of June 5, 1923, that belonged to Paladini, Inc.?

(Testimony of Alexander Paladini.)

A. I never knew what a bridle was, to tell you the truth.

Q. You didn't have any at all?

A. I know what it is now, but I didn't know what it was then.

Q. Who is Del Savaro?

A. Del Savaro is the contractor.

Q. He is an Italian contractor, isn't he?

A. Yes.

Q. He is not a seafaring man?

Mr. LINGENFELTER.—Just what do you mean by an Italian contractor; is there any insinuation on the nationality?

Mr. HEIDELBERG.—Now, forget that, won't you?

The COURT.—Now, Gentlemen, that will be all of that. Proceed with the examination.

Mr. HEIDELBERG.—Q. He is an Italian, and he is a contractor: [193] That is what I mean.

A. Yes.

Q. And you know he is not a seafaring man?

A. Not a seafaring man, no.

Q. What kind of contracting does he do?

A. He builds houses.

Q. And he is a friend of yours?

A. It is all right for him to be a friend of mine. That is all right. There is no secret in that. He built the superstructure on my wharf and I paid him for it.

Q. Yes, that is what I am getting at; he is a building contractor, isn't he? A. Yes.

(Testimony of Alexander Paladini.)

Q. And you know what he is, because you have known him for some time? A. Sure.

Q. Who is Martin Brown?

A. I don't know; I don't know that I ever met him.

Q. You talked to him over the telephone?

A. I may have, I don't know.

Mr. HEIDELBERG.—That is all.

Redirect Examination.

Mr. LILLICK.—Q. Do you remember how long after this accident in June you first heard that the men were going to make a claim against A. Paladini, Inc.?

A. I think six or eight months must have elapsed before I heard about it; Mr. McShane came down to my office one day and told me he was trying to collect some insurance for the men. That was the first time I ever heard anything about it.

Q. Up to that time did you know anything about the necessity of making an investigation as to how the accident had happened? A. No. [194]

TESTIMONY OF DAVID CROWLEY, FOR PETITIONER.

DAVID CROWLEY, called for the petitioner, sworn.

Mr. LILLICK.—Q. Mr. Crowley, what is your connection with the Crowley Launch & Tugboat Company? A. Manager.

Q. How long have you been its manager?

(Testimony of David Crowley.)

A. About 20 years.

Q. How long have you been in the towboat business? A. All my life.

Q. Will you, with this bridle that we have here, explain to us what the thimble is? Point out the thimble on this bridle.

A. These are two thimbles.

Q. The witness pointing to the two ends.

The COURT.—I know what a thimble is. The thimble I have been accustomed to, however, is where the cable passes through and is flanged out and fastened with babbitt.

Mr. LILLICK.—That is the kind I have been familiar with, your Honor.

Q. Will you explain to us what difference, if any, there was in the shackle that in 1923 was on all of the bridles that were owned by the Crowley Launch & Tugboat Co.?

A. The bridle we had comes over here and turns right through here. This is a different kind of a shackle.

Mr. HEIDELBERG.—It is different entirely.

Mr. LILLICK.—Now, just a moment. The witness says that the bolt or rivet, or pin comes through on the other side, your Honor. Now, counsel's remark, "It is entirely different," I would like to have expunged from the record.

The COURT.—All right, expunge it from the record. As I said before, I do not expect to decide this case, or any other case, on the remarks of counsel.

(Testimony of David Crowley.)

Mr. LILLICK.—I sometimes feel it is important however, your Honor, to call attention to the remarks of counsel as you [195] are going by.

Q. Then the shackle to which the tow-line, itself, would be connected on the bridles owned by the Crowley Launch & Tugboat Company in 1923, will you explain that, Mr. Crowley?

A. There would be another thimble like this going in here, and the rope would come around here, spliced into the thimble.

Q. So that the tow-line would be looped through here?

A. The thimble would come here like that, and here would be the rope; the tow-lines we have have this thimble right here on this shackle—not on this one. This thimble would be here, and another thimble would be here.

Q. So that, as a matter of fact, there would be three thimbles? A. Yes.

Q. One leading to each bitt on the barge?

A. Yes.

Q. And the third straight to the tow-line?

A. Yes.

The COURT.—Q. Are those swivels galvanized?

A. Yes, they are galvanized.

Q. Do they rust readily?

A. No, except if you leave them like this. There is no place for it to rust. It has to be galvanized, otherwise it would rust. Maybe that is why they are galvanized, because otherwise they would rust.

(Testimony of David Crowley.)

Mr. LILLICK.—Q. You are acquainted with Barge 61? A. Yes.

Q. Do you know what pile-driver the Healy-Tibbitts Construction Co. used on Barge 61, in June, when they took it up to Point Reyes?

A. No, I don't know that.

Q. Do you know with whom the Healy-Tibbitts Construction Co. arranged for Barge 61 at the time they did the work up at Point Reyes?

A. Mr. Figari, I think.

Q. Are you acquainted with the "Three Sisters," do you know the boat called the "Three Sisters"?

A. I have seen her; I am not [196] acquainted with her. I have seen her from a distance, I have been close by and around her.

Q. What type of towing does the Crowley Launch & Tugboat do?

A. All kinds of towing; towing barges, and vessels, and things like that. There are different varieties of towing.

Q. Will you explain to us why, with a barge without a rudder, such as Barge 61, it is necessary to use a bridle instead of having a straight towline?

A. The bridle is used because when a barge takes a sheer in the seaway, the bridle straightens her up. If you had rudders on the barge, you would not need a bridle. When they start to sheer the bridle will bring them back again on a line.

Q. What is the size of the wire rope making up

(Testimony of David Crowley.)

the parts of the bridles used by the Crowley Launch & Tugboat Co., in June, 1923?

Mr. HEIDELBERG.—I think counsel should ask what sizes were used.

Mr. LILLICK.—Very well, I will accept the suggestion.

A. There was only one size wire we used, a $\frac{7}{8}$ wire.

The COURT.—Q. Steel?

A. Steel wire. Regular towing wire they call it.

Mr. LILLICK.—Do you know anything about the borrowing or the hiring of a bridle from you in June, 1923, by the Healy-Tibbitts Construction Co. for use on this barge?

A. I know that they borrowed a bridle, because I was told that they borrowed a bridle.

Q. Who arranged for the barge?

A. Mr. Figari; Willie always attends to those matters.

Q. Who is Mr. Figari?

A. The superintendent of the Crowley Launch & Tugboat Co.

Q. And who for the Healy-Tibbitts Construction Co. hired the barge?

A. Martin Brown does the hiring of floating equipment. [197]

Q. Do you know in this particular instance whether or not the barge and the bridle that were used to tow up the pile-driver to Point Reyes in May of 1923 were the property of the Crowley Launch & Tugboat Co.?

(Testimony of David Crowley.)

A. Yes. We loaned it to the Healy-Tibbitts Construction Co.

Cross-examination.

Mr. HEIDELBERG.—Q. Mr. Crowley, are you sure that all of your swivels are galvanized?

A. Yes.

Q. Are you familiar with the swivel which now reposes underneath your counter in your main office? A. No.

Q. You would be surprised to find out that that was not galvanized, wouldn't you?

A. I would be more than surprised, because we don't use any swivels that are not galvanized.

Q. You would be surprised if I told you that that had a bolt in there that was not galvanized at all?

A. Unless the galvanizing wore off the swivel. That is the only way it would not be galvanized.

Q. Your swivels are, as to the bolt, entirely different in construction from this swivel that you see here?

A. Yes, entirely different.

Q. They are not anywheres like this, which has no bolt? A. No.

Q. And the swivel which you loaned to Paladini through Healy-Tibbitts was a swivel that was entirely different from this one?

A. Yes, it was different from that swivel there.

Q. Even if a bolt were galvanized, it would, by constant friction, wear off, wouldn't it?

A. Yes.

(Testimony of David Crowley.)

Q. And then it would become rusted, wouldn't it? A. Yes, if it wore off.

Q. You don't know anything of your own knowledge, Mr. Crowley, about Healy-Tibbitts securing this bridle and equipment from [198] you, do you? A. No, I don't know anything about that.

Q. You only know that Willie Figari attended to it? A. Yes.

Q. And Willie Figari is a very able, competent fellow, isn't he? A. Yes.

Q. He had charge of your equipment at that time? A. Yes.

Q. And he knows what kind of equipment you had at that time?

A. All the time. That is what he is supposed to know, to know those things.

Redirect Examination.

Mr. LILLICK.—Q. Speaking of this particular equipment, in comparison with the equipment that was on the bridle that you used in May and June, 1923, is it not a fact that just as this bridle has one end connected with the bridle and the other end with the tow rope, there are links on each side?

A. Yes, sir.

Q. They were alike in that? A. Yes, sir.

Q. Were they not alike in the fact that to one of the links was attached a thimble leading to a wire that ran to one of the boats? A. Yes.

Q. And were they not also alike in that on the other side was a similar thimble leading to a bitt?

A. Yes.

(Testimony of David Crowley.)

Q. Weren't they also alike in that the link nearest the towboat was free on a pivot and turned?

A. Just the same.

Q. And is it not a fact that the only difference at all between the two was that where there is a shackle here, or what we used to call a clevis, there was a thimble on the one you used in May and June, 1923?

A. Just like this, with a manila rope in it.

Q. And the only other difference was that the pin, instead of being a part of one of the links, ran through as a pin or a rivet running free on both ends instead of only one?

A. Yes. We run it free on both ends.

Q. That is, instead of only one?

A. Yes. [199]

Mr. HEIDELBERG.—Q. That difference, to you, is very noticeable, isn't it, that difference in the construction? A. Yes.

Mr. LILLICK.—Q. Did you ever see one of these that was rusted or frozen tight?

A. If the galvanizing gets off it and it lies idle it will *rush* up. That is what it is galvanized for. The bare iron will naturally rust if it is not galvanized.

Q. Do you ever use shackles of that type in your work when they are so frozen?

Mr. HEIDELBERG.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—I think that what is done generally, Mr. Lillick, is of very little value.

(Testimony of David Crowley.)

Mr. LILLICK.—Q. Have you ever seen one of those frozen and rusted?

Mr. HEIDELBERG.—The same objection.

The COURT.—Let him answer.

A. If it is froze it won't work, you can't use the bridle, this part of it won't twist. That is what it is there for, to keep the turns out.

Mr. LILLICK.—That is all.

TESTIMONY OF WILLIAM FIGARI, FOR
PETITIONER (RECALLED).

WILLIAM FIGARI, recalled for petitioner.

Mr. LILLICK.—Q. Mr. Figari, I want to direct your attention to the swivel that was on the bridle that was used in making the tow back and forth to Point Reyes. Do you remember it?

A. Yes, I do.

Q. Do you remember whether or not it ran freely, or whether it was frozen tight?

A. Well, I didn't examine it as to whether it ran freely, or not. I didn't examine it. It was up to the [200] captain of the boat. I took it off one of our boats that was using it.

Q. One of the boats that was using it?

A. Yes, and if it had been so frozen he would have wanted another shackle.

Mr. HEIDELBERG.—That is objected to as immaterial, irrelevant and incompetent, and calling for the opinion and conclusion of the witness, and I move to strike it out.

(Testimony of William Figari.)

The COURT.—No, I will let it stand.

Mr. LILLICK.—Did you see it, Mr. Figari?

A. I saw the shackle. I looked from the dock on to the boat and looked at the shackle.

Q. Did it show any signs of rust?

A. Well, they were all rust; the galvanizing wears off. It won't get so rusty that it will stick the pin in there, the pin will always work free. Some of them are not galvanized.

Q. Do you remember what boat this was taken off of?

A. No, I don't recollect—yes, I do, it was one of the big boats. We have since disposed of the boat.

Q. And was it then in use on that boat?

A. Yes, sir.

Cross-examination.

Mr. HEIDELBERG.—Q. You have now and you did have in June, 1923, some swivels that were not galvanized?

A. Yes, some of them were not galvanized—very few of them, though.

Q. As a matter of fact, Mr. Figari, you testified this morning, did you not, that you did not handle this swivel at all?

A. I said I looked at it from the dock.

Q. You looked at it from the dock while it was on the boat? A. Yes.

Q. And you told the captain to put it on the wharf? A. That is it.

Q. And that is all you know about it?

A. That is all I know about it.

(Testimony of William Figari.)

Q. I call your attention to this swivel that is here in the [201] courtroom, and I ask you if there is not to your eye a very noticeable difference between that swivel and the one that you let Paladini have.

A. Yes, there is. Our pins run right straight through, they are not forged on the other end.

Q. And that difference is a very pronounced difference, and you noticed it immediately, did you not?

A. Yes, I did. We have no thimbles like that at all, we don't use them.

Q. You had none of this description, or character, or kind in your possession at all?

A. None at all.

Mr. LILLICK.—Q. They all run freely on both ends, don't they? A. Both ends are free.

Mr. HEIDELBERG.—Q. You say they run free. That is according to your knowledge, is it?

A. All our swivels on both ends all turn. That one is solid on one end.

Q. You mean if they are in good condition they will run that way? A. Yes, surely.

Mr. LILLICK.—That is our case, your Honor. That is, it is our case with one exception. I had forgotten that we want to call another witness. I would like the privilege of calling Mr. Carlton.

Mr. HEIDELBERG.—I would like the privilege of proceeding with a couple of our witnesses now. I would like to put on a couple of witnesses who

(Testimony of Owen Haney.)

will be short, and they are anxious to get away.
May I do that now, Mr. Lillick?

Mr. LILLICK.—Certainly. [202]

TESTIMONY OF OWEN HANEY, FOR
CLAIMANTS.

OWEN HANEY, called for the answering claimants, sworn.

Mr. HEIDELBERG.—Q. Mr. Haney, where do you reside? A. I reside in Marysville.

Q. On June 8, 1923, where were you?

A. I was up at Point Reyes; I could not swear right to the date.

Q. What was your business or occupation about that time, and for a month prior to that time?

A. Engineer on the pile-driver.

Q. Working for whom? A. Healy-Tibbitts.

Q. Did Mr. Carlson work with you at that time?

A. He was my foreman.

Q. Did you leave San Francisco to go up there first? A. Yes.

Q. Where from? A. Pier 23.

Q. On what vessel? A. The "Corona."

Q. What time of day?

A. Between 6 and 7 o'clock in the morning.

Q. How long were you up at Point Reyes all together?

A. I could not swear right to the time; about five or six weeks, I should judge.

Q. As a matter of fact, wasn't it from May 10 to June 8, 1923?

(Testimony of Owen Haney.)

A. Somewheres along in that neighborhood.

Q. During the time you were up there, did you come back and forth week-ends?

A. No, sir, I didn't.

Q. Do you know whether or not the other men did? A. Part of them came.

Q. On what boats would they come and go, if you know?

A. They came on the "Three Sisters." I think they came down once on her, or twice, and came back on her.

Q. They went back and forth on the two boats, the "Three Sisters" and the "Corona"?

A. Yes, sir.

Q. Do you know now how many times they came on the one or on the other?

A. No, I could not swear to that, because I was [203] paying no attention to it.

Q. On June 8, 1923, you left Point Reyes, did you? A. Yes, sir.

Q. How did you leave Point Reyes?

A. We left the Booth Wharf.

Q. On board what boat?

A. The "Three Sisters."

Q. Calling your attention to about June 6, 1923, I will ask you if at that time you saw the "Three Sisters"?' A. Yes, sir.

Q. Did she come into Drake's Bay then?

A. Yes, she came up alongside the scow with some lumber for the dock.

Q. Where were you standing at that time?

(Testimony of Owen Haney.)

A. I was standing back, I was on the hind end of the driver.

Q. Who was around you at that time?

A. There was nobody right around me. They were out in front, in front of the driver, ahead.

Q. Did you hear any remarks made by the captain, Mr. Kruger, at that time, to Mr. Carlson?

A. Well, I could not say direct to him, no.

Q. But you do know that the "Three Sisters" waited over there how long; how long did the "Three Sisters" wait? A. Two days, I believe.

Q. Did you hear the captain make any remarks to anybody at that time when he first came up there?

A. When he came back to the donkey again, he said he was going to wait until we got through and take us down.

Q. He said he was going to wait until you got through and take you down? A. Yes.

Q. That is the substance of it, is it? A. Yes.

Q. You are not pretending to give the exact words, are you? A. No.

Q. Where were you at the commencement of this voyage: Were you on the barge, or on the "Three Sisters"? A. I was on the barge.

Q. What were the men doing there, including yourself?

A. We picked up the anchor with the donkey, and I was filling the boiler full of water, putting the fire out. [204]

(Testimony of Owen Haney.)

Q. You had to use the donkey to pick up the anchor, did you? A. Yes.

Mr. LILLICK.—Your Honor, I object to this as leading.

Mr. HEIDELBERG.—It is, but I am just trying to hurry it up.

Mr. LILLICK.—I don't want you to ask any leading questions at all.

Mr. HEIDELBERG.—I let you get by with a lot of it.

Mr. LILLICK.—Thank you; that was very nice of you.

Mr. HEIDELBERG.—Q. What tow-line did the "Three Sisters" have out when she first started the tow from Point Reyes to San Francisco?

A. I should judge about 50 or 60 feet.

The COURT.—Q. Were you on the barge, then, or were you on the "Three Sisters"?

A. I was on the barge, then.

Mr. HEIDELBERG.—Q. Later on, was that tow-line changed in any way?

A. It was lengthened out some.

Q. You noticed, did you not, that—

Mr. LILLICK.—Now, pardon me, I object to that as leading.

Mr. HEIDELBERG.—Q. Did you or did you not notice the barge as it was being towed from Point Reyes to San Francisco?

A. Naturally you would notice it, looking back at it.

Q. Can you tell us what was the extreme greatest

(Testimony of Owen Haney.)

distance at any time between the barge and the "Three Sisters"?

A. That is, you mean before the line broke?

Q. Yes, at any time, the greatest distance that ever separated the two of them while the barge was being towed.

A. I should judge about 200 feet.

Q. 200 feet? A. At the outside.

Q. Were you ever warned, or was anything ever said to you about any position you should occupy on the boat? A. No, sir.

Q. Did the captain make any remark to you about looking out for the tow-line?

A. No, sir. [205]

Q. Do you know whether the speed of this boat was slowed up, or was increased at any time while the tow was going on?

A. Well, the captain told me he was going to try to make it in five hours. That is all I know. I don't know whether he speeded it, I don't understand them kind of engines.

Mr. LILLICK.—I ask that the words, "the captain told me he was going to try to make it in five hours," be stricken out. The question was, your Honor, how fast the vessel went.

The COURT.—Yes, let it go out.

Mr. HEIDELBERG.—Q. Did you notice any rope on the deck while the barge was being towed?

A. Yes. There was quite a bunch of it coiled up on the deck.

Q. Where was that coiled up?

(Testimony of Owen Haney.)

A. Right back behind the house, the engine-house there, at the foot of the mast.

Q. What did you do with Carlson right after he was injured?

A. We picked him up and laid him down on this coil of rope which was there.

Q. Was the coil of rope wet or dry at that time?

A. It was dry; it had never been out.

Mr. HEIDELBERG.—That is all I will go into with this witness.

Cross-examination.

Mr. LILLICK.—Q. After the accident and you came ashore, where did you go?

A. I went home, over to Emeryville.

Q. Did you call on the men who were hurt, did you call on them afterwards?

A. No, sir; I went up to Healy's office after my money the next day, and I was told that Mr. Carlson had regained consciousness.

Q. Do you know where Mr. Carlson was at that time?

A. Mr. Edwards, in Healy's office, told me he was in one of the hospitals, but I could not say now which one.

Q. When did you see Mr. Carlson again?

A. I don't think I seen [206] Mr. Carlson for six months; I went on another job.

Q. Where was that other job?

A. I went over close to the Moore Shipyards first, pulling some piles out, and then I went up to

(Testimony of Owen Haney.)

San Rafael; practically all over, like us fellows have to go.

Q. Were you working with any of the men who had been working on the Point Reyes job?

A. No, sir; I only worked with one of them since that time.

Q. When did you see that man after the accident? A. Six or seven months.

Q. So that the only two men whom you have seen since who were on the Point Reyes job have been Carlson and this one man?

A. Oh, no, I have seen them all since.

Q. Did you see any of the other men earlier than the six months period which you specified as being the first time you saw Carlson again?

A. I seen one of them over in Oakland, but I never worked with him.

Q. Did you talk to him at all? A. Sure.

Q. Did you talk to him about this job up at Point Reyes, and the accident?

A. Well, naturally, you would talk about the accident.

Q. How long after the accident did you see that man?

A. I seen him the next day after the accident.

Q. You saw him the next day? A. Yes.

Q. Did you discuss it with him at that time?

A. Naturally, we talked about the men getting hurt.

Q. How often did you see him thereafter?

(Testimony of Owen Haney.)

A. That is pretty hard to say; I might see him once a week, maybe on Saturday afternoons.

Q. Where did the bridle break?

A. One of them broke at the thimble and the other one broke at the barge.

The COURT.—Q. Do you mean at the bitt?

A. Yes; one broke [207] at the thimble and the other broke at the other extreme end, where she goes over the bitt.

Mr. LILLICK.—Q. Did the rope, itself, break?

A. No, sir.

Q. What was it that broke? A. The cable.

Q. I meant the wire rope. The cable, itself, broke? A. Yes.

Q. It was not the thimble that broke away from the shackle, it was the rope, itself, that broke?

A. It broke back of the splice.

Q. Was it a clear break, or did it tear apart?

A. It was a ragged break.

Q. Where did the ends remain after the accident, do you remember? A. Which end?

Q. Either end.

A. One piece of the cable remained on the barge, the other one was on the end of the swivel.

Q. So that when *when* the rope was drawn in on the launch it had two broken strands of the bridle appended to it, did it?

A. The thimble was there, and the little pieces of cable where it was spliced in.

The COURT.—The whole swivel was still attached to the line? A. Yes.

(Testimony of Owen Haney.)

Mr. LILLICK.—Q. And the other side of the bridle, as I understand you, broke up near the bitt?

A. Up near the bitt, on the barge.

Q. So there was one long piece of the bridle and one short piece of the bridle? A. Yes, sir.

Q. When did you have your attention first called to the distance between the launch and the end of the barge?

A. I naturally looked at it when we started out towing.

Q. When after the accident, I say?

A. When I came in here to the courtroom, I think.

Q. You heard to-day for the first time that there was a question [208] about the distance between the stern of the tug and the bow of the barge?

A. I heard it yesterday when the captain was testifying.

Q. And that was the first time after the accident that your attention had been called to that point?

A. Whether they had a longer or shorter tow-line.

Q. You are quite sure about that, are you?

A. Yes, sir.

Q. Have you discussed that question with any of the witnesses who have testified for us to-day or yesterday? A. No, sir.

Q. You have only discussed that question with the witnesses whom you believe are to testify for the men: Is that true? A. I believe so.

(Testimony of Owen Haney.)

Q. How much in the way of equipment was loaded on the launch?

A. There were seven or eight mattresses and seven or eight springs and the cooking utensils.

Q. What kind of cooking utensils?

A. Pans and pots, and stuff like that, and a stove; our suitcases.

Q. How many suitcases?

A. Each man would have one, if not two; I know I had one.

Q. Do you know how many suitcases there were?

A. No, sir, I could not swear to how many suitcases there were.

Q. Do you know how many had bags?

A. I know one man had a bag.

Q. How about blankets?

A. We all had blankets.

Q. Were they in rolls, or were they in bags?

A. I know that mine was in a roll.

Q. So that you had a roll, and you had a suitcase? A. Yes.

Q. What else?

A. Some boxes with grub in them.

Q. How many? A. I could not tell you.

Q. How big were the boxes?

A. It is pretty hard to tell that, too, I suppose; they were boxes that the supplies would come in from the grocery stores. [209]

Q. But you don't know how many boxes?

A. No, I couldn't say.

Q. And you don't know how big the boxes were?

(Testimony of Owen Haney.)

A. No; it is pretty hard to tell that.

Q. As a matter of fact, the only suitcase that you know about is the one you carried yourself?

A. No. I know of three suitcases.

Q. What else was there that was loaded on?

A. I don't know personally of anything else.

Q. Where were the mattresses put?

A. Thrown up on top of the deck-house, there.

Q. Where were the springs put?

A. Piled along the side.

Q. On which side? A. The port side.

Q. Where were the boxes put?

A. Some of them were along the side and some on top of the house.

Q. Are you sure there were some on top of the house? A. Yes.

Q. What held them on the house?

A. They were sitting there, just the same as the suitcases were.

Q. There was not enough of a rock to the boat coming in to disturb the boxes on top of that house?

A. It didn't.

Q. Are you quite sure there were boxes piled on top of that house?

A. I am sure my suitcase and my roll of blankets were on top.

Q. I am asking you about boxes. Are you sure the boxes were on top of that house?

A. Pretty sure.

Q. How big were they? Have you any recollection of that?

(Testimony of Owen Haney.)

A. They would not be very big. Grocery stores don't generally send them out in very big boxes.

Q. What was there on the forward deck?

A. In front of the cabin, or the pilot-house, do you mean?

Q. Yes. A. Well, the stove was put up there.

Q. The stove was put up in front?

A. Yes. [210]

Q. Are you sure of that? A. Yes.

Q. What else was there besides the stove that was put up in the front? A. I don't know.

Q. Have you named all of the things that were put on the boat at the pier?

A. I don't know that I have named all of them. I know there were that many mattresses and that many springs there, because there were that many living there.

Q. Do you think you have left anything out, Mr. Haney? A. I don't know, I might have.

Q. Where were you standing on the way down?

A. You mean coming to Frisco?

Q. Coming from Point Reyes to San Francisco, and before the accident.

A. Alongside the pilot-house.

Q. On the starboard side? A. Yes, sir.

Q. You were one of the men who were talking to Anderson? A. Yes.

Q. Was there any water breaking over you?

A. Once in a while there would be some spray come.

Q. Did you get wet? A. No.

(Testimony of Owen Haney.)

Q. There was not enough coming over to wet you in any way, was there?

A. Not right at that time, there was not.

Q. I am speaking of the time up to the accident; there was not enough to wet you, was there?

A. I don't think I was wet very much.

Q. What is your recollection of the room there was on the fore-deck for other men besides you and the man who was with you: Was there room for all of you there?

Mr. HEIDELBERG.—That is objected to as assuming something not in evidence, to wit, that the man was on the fore-deck.

Mr. LILLICK.—He has already said he was forward of the pilot-house.

Mr. HEIDELBERG.—No, he didn't, he said he was alongside it. [211]

The COURT.—Let him answer the question.

A. Well, I guess if they wanted to string out along there they might have been able to string out along there.

Mr. LILLICK.—Q. So your answer is that they might have been able to string out along there, and all get on the fore-deck? A. Stand up there.

Q. Why didn't you stay on the rear deck?

A. Why didn't I?

Q. Yes.

A. Because I wanted to talk to the fellow in the pilot-house, maybe; I just happened to walk up there.

(Testimony of Owen Haney.)

Q. Did you not appreciate that there was some danger from that tow-line

Mr. HEIDELBERG.—That is objected to as being immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

A. Well, there is always danger.

Mr. LILLICK.—Q. Not only there was always danger, but is it not a fact that that barge was sheering back and forth in this manner behind the launch?

A. It sheered some, of course.

Q. That was why the cable broke, wasn't it?

Mr. HEIDELBERG.—I object to that as calling for the conclusion and the opinion of the witness.

Mr. LILLICK.—Withdraw the question.

Q. You saw the line or hawser running over the after deck of the launch, didn't you, Mr. Haney?

A. Yes, sir.

Q. Didn't you also see that the hawser would cross that deck back and forth with the movement not only of the launch riding over the swells, but also with the sheering of the barge?

A. It was bound to swing some.

Q. It would swing some, and you would have to get out of the way of it if you were near it, wouldn't you?

A. If a man was standing up against it, he might.
[212]

Q. It was a dangerous place, wasn't it? You thought so, didn't you, Mr. Haney?

A. There is always danger when you are pulling on a line of any kind.

(Testimony of Owen Haney.)

Q. When did you notice that tow-line piled up at the foot of the mast?

A. I noticed it when they first lengthened it out.

Q. Do you mean before it was lengthened out, or do you mean afterwards?

A. After they lengthened it.

Q. And sitting as you are in that chair, Mr. Haney, how high up did the coil come? Take the floor alongside of your chair as the deck and tell us how high up it came.

A. I should judge up to about there.

Q. So that your feet would not have been able to have rested flat on the floor had you sat on the coil. Was it that high?

A. You could sit on the coil and put your feet down on the floor, I guess.

Q. Then I will ask you to indicate the distance the top of the coil was from the floor.

A. About what I said before.

Q. Will you keep your hand there a moment. I direct your attention to the position in which your hand is and ask you if you were sitting on a level with your hand whether your feet would touch the floor? A. Pretty close to it.

Q. Will you keep your hand there a moment, please. Your foot is flat on the floor. If you were sitting on a level with your hand, is it not a fact that your feet would not touch the floor?

A. I don't know; I would have to try it.

Q. You don't know. A. No, I don't know.

(Testimony of Owen Haney.)

Q. Mr. Haney, I am seriously trying to get from you your opinion how high that coil of rope was.

The COURT.—Q. Couldn't you tell us in feet?

A. I should judge maybe a foot and a half.

Mr. LILLICK.—Q. So that the coil was a foot and a half [213] high from the floor to the top?

A. In that neighborhood.

Q. How far out were the coils in there running? Would the coil of this wire, here, represent approximately the diameter of the coil of the rope that was there on that occasion?

A. I could give you a better idea here, I think; I think it came right around about here; I think it would just about take up the space that is in here.

Q. You mean this whole space?

A. Yes, I think the biggest part of it.

Q. Measuring from here? A. Yes.

The COURT.—Q. About three and one-half feet in diameter?

A. Yes.

Mr. LILLICK.—Q. That would be the outside of the coil? A. As nearly as I could figure it.

Q. Did you put a mattress over the rope when you seated Carlson on it? A. Yes.

Q. So that the mattress was put below him?

A. We set him on it first and then raised him up afterwards and put the mattress under him.

The COURT.—Q. What is the name of the other man that was hurt? A. Sauder.

Q. What happened to him?

(Testimony of Owen Haney.)

A. When the tow-line broke it hit him across the back of the head and the neck.

Q. Were they thrown against the rail, or on the deck?

A. Mr. Sauder was thrown down into the rail and Mr. Carlson was thrown up against it.

Mr. LILLICK.—Q. Did you see them go over; did you actually see the breaking of the line?

A. I didn't see Mr. Sauder go over. I just turned around from the door to walk back that way when it broke. I seen Mr. Carlson jump over like this, and I ran back and got hold of him. [214]

Q. The launch, itself, was going down on a wave at the time of the breaking, wasn't it—on a swell?

A. I could not say as to that.

Q. You don't remember?

A. No, I don't know whether it was going down or coming up.

Q. Did you hold on to the side of the pilot-house as you were coming down in order to keep your feet? A. No, I don't think I did.

Q. The vessel did not roll, then, in those swells?

A. She jumped, but it did not roll.

Q. What was the jumping from?

A. They always do in a ground swell.

The COURT.—Q. A pitch?

A. Yes.

Mr. LILLICK.—Q. How many times, altogether, did men ride down from the job to San Francisco after the job started?

(Testimony of Owen Haney.)

A. I could not tell you just exactly, but every Saturday.

Q. Every Saturday? A. Yes.

Q. So that some of the men came back every Saturday? A. All but about two of us.

Q. How do you fix the vessel as being the "Corona" upon which they came down once or twice and the "Three Sisters" as the vessel on which they came down once or twice?

Mr. HEIDELBERG.—That is objected to as assuming something not in the evidence. The witness definitely stated that he could not fix the number.

The COURT.—Q. Do you know how many times they came on each vessel?

A. No, sir, I couldn't tell you.

Mr. LILLICK.—Q. Do you know how many times they came on the "Three Sisters"?

A. I am pretty sure they came up there two Monday mornings on the "Three Sisters."

Q. How many times did they come down on the "Three Sisters"?

A. Twice, as near as I can recollect. [215]

Q. How do you know it was the "Three Sisters"?

A. Well, I am standing right there on the wharf when they go out.

Q. When was that first called to your attention—yesterday? A. No, sir.

Q. When? A. I always knew that.

Q. I say, when was your attention first called to the fact that it was important to know upon which

(Testimony of Owen Haney.)

of these two vessels these men came back and went up? Was it yesterday in court? A. Yes.

Mr. LILLICK.—That is all.

Redirect Examination.

Mr. HEIDELBERG.—Q. You never measured the size of the rope that was coiled up, did you?

A. No, sir.

Q. And you are just giving your best recollection of the size of it and the height of it? A. Yes, sir.

Mr. HEIDELBERG.—That is all.

The COURT.—Have you heard, Mr. Lillick, whether the boat has got in yet this afternoon?

Mr. LILLICK.—It is not known whether she will be in before five o'clock. I don't want to inconvenience your Honor or counsel on the other side by taking you down there now and perhaps having to wait until five o'clock. What time to-morrow morning would suit your Honor's convenience?

The COURT.—We can go down in the morning. We will leave here, say, at half past nine.

Mr. LINGENFELTER.—I understand that there are two physical differences in the vessel "Three Sisters" as between now and the time when this accident occurred. The fuel tanks that were on top of the engine-house were removed and put below; also there are two winches that have been installed since that time. [216]

Mr. LILLICK.—All that can be explained to-morrow.

The COURT.—Yes, that can be explained when we get there. We will take our adjournment now

and resume the taking of testimony here in court to-morrow morning at eleven o'clock.

(An adjournment was here taken until to-morrow morning, Thursday, August 7, 1924, at 9:30 o'clock, for the purpose of inspecting the boat, and until 11:00 o'clock A. M. for the purpose of resuming the taking of testimony.) [217]

Thursday, August 7, 1924.

PROCEEDINGS ON BOARD THE "THREE SISTERS," AT PIER 23, SAN FRANCISCO, CALIF.

Mr. LILLICK.—There are two structural changes that have been made in the "Three Sisters" that I would like to have indicated. I am told that the winches, one on each side, are new, that they were not on the "Three Sisters" at the time. Another thing: There were two fuel tanks on the house, one on each side of the skylight at the place I am indicating. I will ask Captain Kruger about the sizes of those fuel tanks. Captain Kruger, do you know the sizes of those fuel tanks?

Mr. KRUGER.—They were for the ordinary water boiler.

Mr. DAVIS.—They were about 12 inches by five feet.

Mr. LILLICK.—They were circular?

Mr. DAVIS.—Yes.

Mr. LILLICK.—Then that was the diameter.

Mr. DAVIS.—Yes.

Mr. LILLICK.—Mr. Kruger, will you point out on the house how far those water-tanks extended?

Mr. KRUGER.—They were pretty close to the end of this house, on both sides.

Mr. BELL.—How high did they stand?

Mr. KRUGER.—About 18 inches; they had a piece underneath so as to keep them off the canvas.

Mr. LILLICK.—Will you indicate where the end of the hawser was made fast to the mast?

Mr. KRUGER.—Made fast right here, right underneath here.

Mr. LILLICK.—I call your attention to what is apparently a water barrel on the starboard side of the mast; was that here on this side? [218]

Mr. KRUGER.—The water barrel was on this side, away from the mast, in here.

The COURT.—Where did the hawser pass over the stern?

Mr. KRUGER.—It passed from the mast right over the stern, here.

Mr. LILLICK.—What are these two metal contrivances?

Mr. KRUGER.—They are the leads for the winch hauling in the line.

Mr. LILLICK.—Those were not on the “Three Sisters” at that time?

Mr. KRUGER.—Yes, they were on the “Three Sisters” then.

The COURT.—Where were these men playing cards?

Mr. KRUGER.—Right over there, in this space right here.

Mr. LILLICK.—Were they in front of this bitt?

Mr. KRUGER.—Yes.

Mr. LILLICK.—You have spoken of the sea coming quarterly; will you explain which direction from where these men were the sea was coming?

Mr. KRUGER.—It was coming right on this side.

The COURT.—That is the only way it could come on the course as he described it.

Mr. BELL.—Captain, there was no flagpole here at that time, was there?

Mr. KRUGER.—No. We carry no flagpole when we are towing.

Mr. BELL.—And that tow-line had nothing there to hold it in one place?

Mr. KRUGER.—No, sir.

Mr. BELL.—The men were playing cards on the starboard side, here, were they?

Mr. KRUGER.—Yes.

Mr. BELL.—About how far from the rail? [219]

Mr. KRUGER.—Just about where Mr. Carlsen is standing now.

Mr. BELL.—About a foot and a half or two feet from here?

Mr. KRUGER.—Yes.

Mr. BELL.—What were they playing on?

Mr. KRUGER.—On the deck.

Mr. BELL.—Sitting on the deck?

Mr. KRUGER.—Yes.

Mr. BELL.—Playing cards on the deck?

Mr. KRUGER.—Yes.

Mr. BELL.—Four men?

Mr. KRUGER.—Yes.

Mr. BELL.—Two were sitting on this side, were they?

Mr. KRUGER.—I don't know; I couldn't tell you where they were sitting.

Mr. BELL.—Captain, this hatch was covered, wasn't it?

Mr. KRUGER.—Yes.

Mr. BELL.—And nobody could be down in there at that time, could they?

Mr. KRUGER.—No.

The COURT.—This is the only entrance to the engine-room, is it?

Mr. KRUGER.—Right here is the entrance. I was standing here at the time of the accident; Anderson was standing here at the wheel. This is the control to put the boat neutral, or to go ahead, or to back up. You can look out from here, you can look right in back. I could not see the men very well sitting down on the deck, but you can see what is beyond.

Mr. LILLICK.—Referring to the two men who were talking to Anderson, where were the two men standing to whom Anderson was talking? [220]

Mr. KRUGER.—They were standing right here; Mr. Anderson was there at the wheel.

TESTIMONY OF WILLIAM CARLSEN, FOR CLAIMANTS.

WILLIAM CARLSEN, called for answering claimants, sworn.

Mr. BELL.—Q. You were one of the men who were injured? A. Yes.

(Testimony of William Carlsen.)

Q. Do you remember, Mr. Carlsen, where the stuff was stowed on board here when you came aboard?

A. Yes, I do. I was the last man to come on the boat. I was phoning. After I got the office then I went to the boat and the boys had loaded all the stuff on the boat. I had ten steel cots and ten mattresses, and two tents, and a cooking stove, and a lot of cooking utensils, such as pots and pans, and stuff like that. The dishes were all boxed up. The stove was standing right here, and the cots were here, and the suitcases and the tents were on the side. All the blankets and bundles and suitcases were piled up on that side. The mattresses were piled across the sky-light on top of the pilot-house. This side from the pilot-house was open. This side was entirely blocked.

The COURT.—Q. Was there anything piled between the companionway and the bow?

A. The stove was up in there; I could not say exactly where it was. The cots were on both sides of this hatch.

Q. Both port side and starboard side?

A. Yes, sir.

Mr. BELL.—Q. What kind of cots were they?

A. They were about six feet long and about three feet wide. We had ten of them. They were folding cots.

Mr. LILLICK.—Q. Is it your testimony that more than one iron cot was on the starboard side between the rail and the [221] *rail and the companionway*?

(Testimony of William Carlsen.)

A. The cots were piled up on both sides; how they were split up I cannot say; there might have been four on one side and six on the other; I did not count them as I came on; I stepped on them, I know; I got on on this side.

The COURT.—Q. You mean between the companionway and the port rail?

A. Yes, sir; I got on right on this side. We had a ladder here from the Booth Company's wharf, and I got on here, and I stepped on the cots; they were piled up against the rail on both sides.

Q. What kind of cots were they?

A. They were six feet long; as to width, I should judge about three feet; I could not say for sure, because I never measured them. They were cots the legs of which fold under.

Q. Iron standards? A. Yes, iron standards.

Mr. LILLICK.—Q. Are you sure that the stove was in front, here?

A. The stove was up in front, here; as to the exact place, I cannot say. All this space was covered up.

Q. How do you happen to fix the stove as being here?

A. I didn't fix any of it; it was on the boat when I got on. I was the last one on the boat; they waited for me for fifteen minutes while I got the office on the phone.

Q. Do you not remember that the stove was back of your boxes on this side, right by the circle where the winch now is?

(Testimony of William Carlsen.)

A. No. When I came aboard the stove was up here. Of course, whether they changed it, or not, afterwards, I do not know. I was back there all the time. I was never up as far as the pilot-house.

Q. When you came on board, you came on by the bow, did you, at the port side? A. Yes.

Q. And stepped across the cots to the alleyway, on the starboard [222] side and walked back to where you subsequently were playing cards?

A. We were right here at the corner where that barrel was standing. I think the barrel was standing on this side. They had a pump at that time where the barrel is now. That is as near as I can remember it. I am pretty sure the barrel was on that side.

Q. And from then on you remained on the after end of the boat?

A. I was aft of the engine-house all the time. This side was entirely closed up with baggage and suitcases.

Q. You mean the port side? A. Yes, sir.

The COURT.—Q. Now, Mr. Carlsen, there is the starboard bitt? A. Yes.

Q. You men were sitting about forward of that starboard bitt?

A. I was sitting about where I am standing now.

Q. That is, about two feet forward of the starboard bitts?

A. About two feet, two or three feet.

Q. Where were the other men sitting?

(Testimony of William Carlsen.)

A. One over here, one there, one here.

Q. You were all in a group in a sort of a corner from the starboard bitt to the starboard corner of the after end of the hatch?

A. I couldn't say exactly as to that.

Q. But about in that locality?

A. Yes. We had not been there very long. I don't remember playing cards. I was knocked unconscious when the line hit me. I don't remember anything about that. It must be so, because my own men told me that that was what we were doing.

Q. The four of you were sitting on deck?

A. Yes, we were all sitting on deck. [223]

(The taking of testimony was resumed in court at 11:00 A. M.)

Mr. LILLICK.—Your Honor, the man whom I asked permission to put on out of order yesterday is not here this morning and will not be here until three o'clock this afternoon; will that inconvenience the Court or counsel to have him take the stand then?

Mr. HEIDELBERG.—No, I don't think so; we can go ahead.

Mr. LILLICK.—Thank you.

TESTIMONY OF CHARLES KRUGER, FOR
CLAIMANTS (RECALLED).

CHARLES KRUGER, recalled for answering claimants.

Mr. HEIDELBERG.—Q. Captain Kruger, will you step down here in the presence of the Court; you see here two swivels, do you not? A. Yes.

Q. Will you pick out from those swivels and show the Court which type of swivel it was that you used or had furnished you on this voyage in question with the “Three Sisters”?

A. This is the swivel we used, the type of swivel.

The COURT.—That had better be identified.

Mr. HEIDELBERG.—We can have it marked as an exhibit.

The COURT.—Yes, let it be marked Claimant’s Exhibit “A.”

Mr. HEIDELBERG.—Q. Captain, calling your attention to this swivel, Claimant’s Exhibit “A,” I will ask you if you see any difference in that swivel and the swivel that you used on that occasion, if you can tell us of any difference?

A. No difference at all. We had the thimble on one end, and the other two on the other end; the cable was made fast.

Q. Calling your attention, Captain, to the bolt in the center of Claimant’s Exhibit “A,” I will ask you if that was the same kind of a bolt that was present in the swivel that you used? [224]

A. I could not swear to that.

(Testimony of Charles Kruger.)

Q. I say the same kind, the same type?

A. Yes, the same type.

The COURT.—The record does not show where Claimant's Exhibit "A" came from.

Mr. HEIDELBERG.—I believe it will be stipulated that this was furnished as an exhibit of the Crowley Launch & Tugboat Company's swivels, will it not?

Mr. LINGENFELTER.—No, it was not. I picked that up at Crowley's. That was a worn out swivel which they had in their office and which they said would illustrate the swivel they used in their business.

Mr. HEIDELBERG.—I think that Willie Figari's testimony is pretty emphatic and clear on that point.

The COURT.—Well, the description of it shows what it is. It is a swivel with two thimbles on the bridle end and a single thimble on the hawser end, with the bolt free and not forged as a part of one of the parts of the thimble.

Mr. LINGENFELTER.—And with two bearing surfaces, instead of one.

Mr. HEIDELBERG.—Yes, that is it.

Mr. LINGENFELTER.—This is the type that they use. Of course, Crowley's have them larger and smaller.

Mr. HEIDELBERG.—Q. How did you have your tow-line made fast to this large thimble?

A. The rope went through the eye, there, and

(Testimony of Charles Kruger.)

ran through the thimble, and we made a bow-line knot.

Q. In other words, you passed the tow-rope around this thimble and then tied it where the two ends join, I mean where the one end joins the continuous part of the tow-line? A. Yes.

Mr. LILLICK.—Q. When you say that this thimble was exactly the same as the thimble that was used on that occasion, [225] are you having in mind the question of whether it was iron instead of galvanized iron or wrought iron instead of plain iron? A. It was galvanized iron.

Q. Which was galvanized iron?

A. The thimble was.

Q. I am asking you whether the appliance as a whole, covering the links on each end, the bolt and the thimble, of the one that was used on this occasion, was it galvanized, or wasn't it?

A. It was galvanized; I am pretty sure of that.

Q. As to the thimble attached to the end that was used by you on that occasion to put the hawser through, was the link larger or smaller than the link on this exhibit which we are now looking at?

A. I could not swear to that whether it was larger or smaller.

Q. Would a seven-inch hawser go through that link before you, in your opinion? A. Yes.

Q. This exhibit which you now as a whole see before you, is it as large or larger than the one that was used by you on the "Three Sisters" on the occasion when the bridle broke?

(Testimony of Charles Kruger.)

A. I could not swear to that; I could not say whether it was larger or smaller.

The COURT.—Does the size of it make any difference in this case?

Mr. HEIDELBERG.—I don't think so.

Mr. LILLICK.—No, your Honor, I don't think it does.

The COURT.—The accident was caused by the parting of the steel or iron cables of the bridle.

Mr. LILLICK.—The only thing I had in mind was this: This was simply brought in as a sample of the mechanical arrangement, and not as a sample of the one that was used; and this, not being galvanized, and as I understood the testimony the [226] other one was galvanized, I wanted that clearly in the record. That is all.

Mr. HEIDELBERG.—Q. Captain Kruger, will you swear now you examined the bolt of the swivel you used, and that you know it was galvanized?

A. I didn't examine it.

Mr. LILLICK.—Q. Upon what do you base the statement you made that the one that you had at that time was galvanized?

A. I am pretty sure that the swivel that we had was galvanized.

TESTIMONY OF WILLIAM CARLSEN, FOR
CLAIMANT (RECALLED).

WILLIAM CARLSEN, recalled for answering claimant.

Mr. HEIDELBERG.—Q. What is your business, Mr. Carlson?

(Testimony of William Carlsen.)

A. Pile driver and bridge builder.

Q. For how many years?

A. Since 1901 in San Francisco.

Q. What is that business, what do you do in that business?

A. I run pile-drivers and build docks and build bridges, and all such things as that.

Q. Are you called upon in your business to handle steel cables? A. Quite a lot, yes.

Q. And hemp rope?

A. Yes, lots of hemp rope.

Q. And you have been handling hemp rope and wire cables for how many years?

A. Well, ever since I was able to work. I have not done anything else but that. When I started out I was a sailor, and since then I have been a pile driver and bridge builder. In all my work I have handled rope all the time.

The COURT.—Q. Those cables are usually made of wrought iron, rather than steel, aren't they?

A. They call them flexible steel. I don't exactly know how they are made, as I never had anything to do with the making of cables.

Mr. HEIDELBERG.—Q. Getting right down to the meat of this [227] case, Mr. Carlson, when did you first see Barge No. 61?

A. Barge No. 61 I seen at the bulkhead at Pier 46, on the inside of the bulkhead at Pier 46, between the Pope & Talbot lumber yard and Pier 46.

Q. When?

A. That was on Monday, the 7th of May. I

(Testimony of William Carlsen.)

was down there then. They were loading some piles on the barge at that time. I was not working there at that time; I went to work in the tool house the following day, on Tuesday, the 8th, I think it was, if that date is right, and loaded up some pile-driving material in the Healy-Tibbitts yard on Bay street, to be taken down to this barge and loaded on it. All I did then was to send it down there, and it was loaded by a derrick barge that was down there then. They were put on Barge 61. I had nothing to do with the loading of the barge, except on the very last day, the afternoon of Wednesday the 9th.

Q. When you speak of the last day, Mr. Carlson, just what do you mean by that?

A. The last day that the barge was in San Francisco.

Q. What happened to the barge after that, what happened to it immediately after that, if you know?

A. The barge left the bulkhead at or around, I think it was about five o'clock.

Q. Well, you know that it left the bulkhead, do you?

A. It left the bulkhead that afternoon at five o'clock to be tied up at Pier 23.

Q. Did you meet anybody down at Pier 46 on this last day that you speak of? A. Yes.

Q. Who did you see down there?

A. I met a gentleman, I can't think of his name; I thought first he was Paladini, but I was mis-

(Testimony of William Carlsen.)

taken. He is a little red-headed fellow; I would know his name if you can mention it to me. [228]

Q. Was it Del Pavero?

A. Del Pavero is the gentleman. He was talking to me at the time about when the barge would be ready, and I told him that it would be ready that evening to go. We were talking for a few minutes, and along came Paladini, himself.

Q. Which Paladini?

A. I think it was Alec Paladini. Mr. Horton introduced him to me as Alexander Paladini.

Q. What conversation did you have at that time?

A. We were standing there talking about leaving on that barge and getting her ready. Horton asked me if I would have everything on it and ready to go that night, and I said I would. He said, "Can you get your men to go down to Pier 23 to-morrow morning at six o'clock and go out with this barge, with the towboat that takes the barge out?" and I said I thought so.

Q. This was all in the presence of Alex Paladini?

A. That is all in the presence of Alex Paladini. So we worked along. Mr. Paladini and the other party split up, I don't know where they went, they went to their office, I presume. Anyway, around about a quarter after four I went over to the office to get the money for the boys who had been with me in Sacramento for Healy-Tibbitts. While I was over there the phone rang. Martin Brown answered the phone.

(Testimony of William Carlsen.)

Q. Who was on the other end of the phone, if you know?

A. That I could not say, what man it was, but it was somebody from Paladini's office, in regard to this tow, and they were trying to persuade Martin Brown then to get his fellows to come down and go on the boat at—

Mr. LILLICK.—Now, just a minute. Apparently this is hearsay. After I find out what it is he heard Brown say I will move to strike it out. In what he is saying now, however, he is starting to give his conclusions. [229]

Mr. HEIDELBERG.—Q. How do you draw the conclusion, that is, how do you know that the conversation was held from Paladini's office?

A. I was standing right alongside of the phone, and Martin Brown was consulting me about what was said over the phone. He was asking me if I could get my men to come down there at three o'clock in the morning, that that is what they wanted over the phone. I said, "No, I, for one, will not go down at three o'clock in the morning if they never build the dock at Point Reyes."

Q. What reason have you to believe that the conversation over the phone with Martin Brown and some other party was with somebody from Paladini's office?

A. I didn't say it was from their office; whether it was from their office, or not, I don't know; they might have been out of the office, they might

(Testimony of William Carlsen.)

not have been in their office when they were phoning.

Q. Did you hear Martin Brown in that conversation speak to anybody by name over the phone?

A. No; he told me that Paladini's office wanted us to come down there at Pier 23 at 3:00 o'clock in the morning instead of 6:00 o'clock in the morning, which I absolutely refused to do on behalf of my men.

Mr. LILLICK.—We ask that that go out on the ground that it is hearsay and not connected with Paladini's office or anybody else.

The COURT.—Yes, let it go out.

Mr. HEIDELBERG.—I cannot connect that up.

Q. But you did have a conversation with Paladini about the men being down there at six o'clock in the morning? A. Yes, that was all agreed.

Q. Mr. Paladini was right there all the time, was he?

A. Yes, Mr. Paladini was right there and also this other [230] gentleman he introduced to me as the man who was to be in charge of the work.

Q. And that conversation took place between yourself, Mr. Horton, Mr. Del Favero and Mr. Alexander Paladini, did it? A. Yes, sir.

Q. How did you go to Point Reyes the first time?

A. It was arranged in that telephone message, Brown arranged it—

Mr. LILLICK.—Now, pardon me, I ask that that go out.

Mr. HEIDELBERG.—That may go out.

(Testimony of William Carlsen.)

Mr. LILLICK.—That will go out, will it, your Honor?

The COURT.—Yes, that will go out.

Mr. HEIDELBERG.—Q. How did you go over to Point Reyes the first time?

A. We went over on the “Corona” the first time.

Q. And when you went over to Point Reyes you went over for that purpose?

A. We went over to build that dock.

Q. For whom? A. For Mr. Paladini.

Mr. LILLICK.—We ask that that go out, your Honor, “for Mr. Paladini.” I should have objected to the question in the first place. I did not assume that the witness was going to answer that he was going there to do the work for Paladini. The question is, who was this witness employed by.

The COURT.—But he didn’t say that. He said the wharf was built for Mr. Paladini. There is no question about that, is there?

Mr. LILLICK.—None at all, your Honor, I withdraw the objection.

The COURT.—He doesn’t say he was employed by Mr. Paladini.

Mr. HEIDELBERG.—Q. How long were you in constructing that wharf?

A. The whole time was—the barge got up there on the 10th of May, between 4:30 o’clock and 5:00 o’clock in the afternoon, and we left there on June 8th around 3:30 *in the* [231] *wharf* had been finished at that time, and the pile-driving.

(Testimony of William Carlsen.)

Q. All the time you were building this wharf, did you remain at Point Reyes?

A. No, I came home week-ends and went back on Monday morning.

Q. What did the other men do during that time?

A. Two of them stayed over there, and the remainder of them came home.

Q. How did you come home to San Francisco during those various times? A. On Paladini's boats.

Q. How did you go back upon the various times you went back? A. On Paladini's boats.

Q. Did you have any conversation with the captains when you would be coming over, say on Saturdays, as to what time you would be going back?

A. He always used to ask me, "What time do you want to leave Monday morning?" On Saturday he would always ask me what time I wanted to go back Monday morning.

Q. And then would you find the boat waiting for you there on Monday morning?

A. Every Monday morning, yes.

Q. Can you tell us what boat it was you traveled back and forth on?

A. Well, it was about fifty-fifty, with the "Three Sisters" and the "Corona." The first time we went up on the "Corona"; we came back on the "Three Sisters." He landed us then down at Pier 41, down at Healy's rock bunkers. Two times after that we came back on the "Three Sisters" from Point Reyes. I think we went up more on the "Three Sisters" than we did on the "Corona."

(Testimony of William Carlsen.)

Q. But you have no absolute knowledge at this time of just how many times you traveled back and forth on any particular boat?

A. No, I could not say to the exact number of times. I should say about half and half on each boat.

Q. During the time you were up there with your crew, were you [232] furnished with water and supplies? A. Yes.

Q. Who furnished you with the water and the supplies?

A. The "Three Sisters," first; then the "Three Sisters," I believe, went down to Monterey, or some place, and then the "Corona" took its place for a while. When one boat was out of town the other one attended to us all the time. We had water for the boilers and stuff like that all the time.

Q. When did you see the "Three Sisters" on this last voyage up there; how long before June 8th was it?

A. It was on June 6th, around noon time, I think; whether it was right before dinner or right after dinner I would not be sure.

Q. Where were you standing at that time?

A. I was on top of the dock.

Q. Who was with you?

A. Practically all the men were around there in the neighborhood, because we had finished the dock all the way out to the very end. The captain came over with lumber on top of his boat, the "Three Sis-

(Testimony of William Carlsen.)

ters," the lumber that was to finish the last end of the dock.

Q. Did the captain say anything to you as he drew alongside of the wharf? A. Yes.

Q. What did he say to you at that time?

A. He hollered up to me and asked me what time I would get finished. I said, "It will take a couple of days, Cap." He said, "I got orders from Paladini to stay here and wait and take you fellows home."

Q. Then what happened to the "Three Sisters" after that?

A. He left and went over to a fish barge that they had over there, a barge with a big house on it. I think it was also Crowley's barge. He tied up alongside of that barge, and he lay there and waited until the last day, and then he came back alongside for us. [233]

Q. Did you have any conversation with him on the Saturday, after you had finished the job?

A. Yes. We had it all arranged the captain was to—

Mr. LILLICK.—Now, just a minute, I object to that.

Mr. HEIDELBERG.—Q. Just give what conversation you had, if any. Did you have any conversation at that particular time that you now remember?

A. Yes, I remember making arrangements with the captain—

Mr. LILLICK.—Now, just a moment.

(Testimony of William Carlsen.)

Mr. HEIDELBERG.—Q. Don't say that you made arrangements, Mr. Carlsen, because that calls for your conclusion as to what the arrangements were. State what you said to him and what he said to you, if you remember it; if you don't remember it exactly, give the substance of it.

A. He came alongside the barge and took us up to the dock. We had no way of getting off the barge. The barge was tied up with anchors. We had a skiff over there, a rowboat, and we had to hoist that up on the barge. The only way we could get off the barge was by Paladini's boat. He came alongside of the barge and waited for us until we heaved up. Then he took us on the boat up to the F. E. Booth Company's dock.

Q. What did you do then?

A. I went in the F. E. Booth Company's house and used their phone to phone to Healy-Tibbitts that we were coming home.

Q. Where were the rest of the men at that time when you were telephoning?

A. The rest of the men at that time were loading the cots and the cooking utensils, and the blankets, and the mattresses, and all that stuff, on the boat.

Q. I call your attention to Mr. Davis, who is sitting here in the courtroom, and I ask you if you ever saw him before you [234] saw him here the other day in the courtroom?

A. I seen him once next to the last day I was over there. He came over there to Point Reyes.

(Testimony of William Carlsen.)

Q. Did you have any conversation with him at that time?

A. I told him that the captain was laying over there waiting for me, that he said he had orders to stay there and wait for me. He came over on the "Corona" after some fish.

Q. Did you tell him anything about how you were going to go back to San Francisco?

A. I told him we were going back with the "Three Sisters" that was waiting for us there.

Q. What, if any, remark did he make to that?

A. None that I can remember of. I didn't know who the gentleman was at that time, myself, and so I didn't have much conversation with him. He wanted to get the dimension of a band that was to go around a pile over there that was to be used as mast to put a boom on to sling fish on to the dock.

Q. After you finished your conversation with the Healy-Tibbitts office from the telephone at Booth's Wharf, what did you do?

A. I then went on the boat.

Q. When you went on the boat, what boat do you mean? A. The "Three Sisters."

Q. Were you ever on the barge at any time?

A. Not after that, no.

Q. Who else, if anyone, boarded the "Three Sisters" with you?

A. Me and the cook remained on the "Three Sisters," that I know of.

Q. At the time you boarded the boat, was your camp equipment on board? A. Yes.

(Testimony of William Carlsen.)

Q. And also the men's clothing and supplies?

A. Yes.

Q. Did you ask the captain for permission to board the "Three Sisters" on that day?

Mr. LILLICK.—That is objected to as leading.
[235]

Mr. HEIDELBERG.—It is in rebuttal, your Honor.

The COURT.—I will allow it.

Mr. HEIDELBERG.—Q. Did you ask the captain for permission to come back on the "Three Sisters" upon that Saturday?

A. I didn't ask him no permission; I had an invitation to come on board. He plainly told me that that is what he was there for—to take us home.

Q. Did you hear any of your men ask the captain for permission to come aboard the "Three Sisters" and be transported to San Francisco?

A. No, sir.

Q. When you boarded the "Three Sisters," where did you go?

A. I boarded her on the bow, and then I walked right aft on the starboard side to the back end of the engine-house, and I remained at the back there all the time that I was on the boat, until the accident.

Q. Did you have any conversation with the captain at any time while you were on board the "Three Sisters," in which he told you of any specific part of the boat that you were to occupy?

A. No, sir, absolutely not.

(Testimony of William Carlsen.)

Q. Did he at any time during that voyage warn you about being in any particular position or location on that boat? A. No, sir.

Q. When you were at the stern of the boat, did the captain visit you back there; was he there with you at some time?

A. Yes, he was back there several times. I got three small salmon trout and—

Q. I was just going to ask you about that. What did the captain do, if anything, while you and your companions were on the back of the boat? I will withdraw that question for a moment. Who was with you in the stern of the boat?

A. It was Sauder and Reed, and a fellow by the name of Fred [236] Woods, the cook we had over there and myself, and Ed Rowe was also in back there. There were five of us back there then.

Q. Did you hear the captain say anything to any one of those men about any position or location they were to assume on this boat? A. No, sir, never.

Q. Did you hear him say anything to those men in your presence or in your hearing about it being dangerous to be in any part of that boat?

A. No, sir.

Q. Now, you say the captain came back there and was with you at the stern of the boat for a while?

A. Yes, sir.

Q. What, if anything, did the captain do while he was back there?

A. I got three small salmon trout from the fellow in charge of the F. E. Booth Company's dock the

(Testimony of William Carlsen.)

night before, and I took them on there, and I had them lying on the hatch; the captain said, "Wait a moment and I will clean them for you, because I am an expert at that." He came back there and was sitting on the hatch cleaning the fish for me while the boat was on the way.

Q. Do you know who was steering the boat at that time?

A. At that time Scotty Evans was on the boat.

Q. And was he steering the boat?

A. Yes, he was steering the boat; he was in the pilot-house at that time.

Q. And this cleaning the fish incident happened when, was it while you were on your way to San Francisco?

A. Yes. We had been out I should judge about half an hour, or a little over, or such a matter as that; I could not say exactly to the minute, because I didn't time it.

Q. After you started out from Drake's Bay, did the captain at any time make any change in the length of the tow-rope? A. Yes.

Q. Did you notice the distance at any time that existed between [237] the barge and the "Three Sisters"? A. Yes, I took notice of that.

Q. What would you say, Mr. Carlsen, based upon your experience and what you saw there at that time, was the extreme length or distance that separated the barge from the "Three Sisters" at any time during that voyage?

(Testimony of William Carlsen.)

A. The very extreme, as near as I can judge, would be about 180 feet.

Q. And that includes, of course, the length of the tow-line out and also the bridle?

A. Yes, the distance between the boat and the barge.

Mr. LILLICK.—Will you be good enough, Mr. Heidelberg, not to be quite as leading in your questions as you were in that last one?

Mr. HEIDELBERG.—Q. What does that distance include?

A. It includes the distance between the barge and the tugboat, including the bridle and the rope.

Q. Where were your men when you first started out from Point Reyes? When I say “your men,” I mean with the exception of yourself and the cook. Where were the rest of the men? You testified that you were on the boat. Where were the rest of the men when you first started out?

A. One of them was in back of the pilot-house—there is a little narrow galley there, and he was in there shaving himself.

Q. I don't think *I* understand me. I mean when you first started out from Drake's Bay, from Point Reyes, at the very beginning; were some of your men on the barge?

A. We were all on the boat first; some of them had to go on the barge in order to get the barge going. They had to go on the barge in order to pick up the anchors.

(Testimony of William Carlsen.)

Q. I understand that you were first on the boat to be transported [238] over the wharf.

A. Yes; this is the way it was. First, in the boat over to the wharf; then from the wharf to the barge—that is, from the wharf back to the barge to get on the barge.

Q. What happened to your men then?

A. Some of them went on the barge; the engineer, and I think four men went on the barge and picked up the anchors. After the anchors were picked up the captain went very slow with a short tow-line, I should judge around 50 or 60 feet, including the bridle and all, for about 15 or 20 minutes, until we were pretty close to the bell buoy, there; then he backed up and took the men on the boat, because I had arranged with the captain to—

Mr. LILLICK.—Now, just a moment, I object to his saying what was arranged.

Mr. HEIDELBERG.—Q. Don't say you had arranged with the Captain, say just what was said.

A. We had talked it over, me and the captain, if my cook could use his stove to cook some coffee for the men on the boat after we got started, because we broke camp in the morning and we had nothing to eat that day; so we asked him as a favor if after we got on the boat my cook could use his stove to cook coffee for the men, and he said, "Certainly." When the cook got on the boat he cooked coffee and when the men came on the boat again after they got the anchor up and the ropes coiled up so that if we did come into town in the dark they would know where

(Testimony of William Carlsen.)

to find the ropes to tie her up; then we all stood around the engine-house in a row and had our coffee.

Q. After that what did you do?

A. After that we were on the back end of the boat, back of the pilot-house. Then after that the captain cleaned the fish for me. Then, as I heard afterwards, we commenced to play cards. I don't remember anything about that. [239] We didn't play cards very long, because I don't remember anything about it.

Q. Did the captain go below into the engine-room at any time during this voyage? A. Yes, sir.

Q. And when he came back from there—I presume he did come back—did he make any remark to you at any time concerning the speed of this boat?

A. He asked me, "How do you like the speed of her now"—when he came up over the galley. What he meant I don't know.

The COURT.—Q. Do you mean the galley?

A. I mean the hatch, on top of the engine-house.

Mr. HEIDELBERG.—Q. Did you ever notice the speed of the boat diminish after that particular incident? Did he slow her down, as far as you know?

Mr. LILLICK.—Which is the question, did you ever notice, or did he slow it down?

Mr. HEIDELBERG.—I will withdraw the question.

Q. Did you notice any change in the speed of the boat after that time?

A. Yes, he speeded her up.

Q. When did he speed her up?

(Testimony of William Carlsen.)

A. He had just done it before he came up from the engine-house.

Q. And was it then he made the remark to you, "How do you like the speed"? A. Yes.

Q. Then after that did you notice any change in the speed of the boat?

A. No, sir; in fact, that was the last I remember on the boat; that is the last word I heard anybody speak on the boat, the captain asking me how did I like the speed. I don't know how long after that the accident was. That is the last I remember.

Q. You know Willie Figari, of Crowley's, do you not? A. Yes. [240]

Q. Did you meet Willie Figari after this accident at any time?

A. I went down there, it has been about four months ago, or such a matter.

Q. Did you have any conversation with him at that time regarding the swivel?

Mr. LILLICK.—Now, just a minute—

Mr. HEIDELBERG.—Answer "Yes" or "No."

A. Yes, I did.

Mr. LILLICK.—Just a moment, Mr. Carlsen, when I object, please wait until I make my objection. I ask, if your Honor please, that the answer be stricken out, so that I can object.

The COURT.—Let it go out.

Mr. LILLICK.—We are now on the threshold, apparently, of a conversation with Willie Figari. He certainly would have no right to bind A. Paladini, Inc. The only purpose of such a conversation

(Testimony of William Carlsen.)

could be to introduce evidence that would be binding upon them. We object to the evidence upon that ground.

The COURT.—I think, Mr. Lillick, that this conversation which counsel is now seeking to elicit was asked of Mr. Figari on his cross-examination with reference to the condition of this bridle or the swivel. As I remember it, he said he could not remember any such conversation.

Mr. LILLICK.—Is that the purpose?

Mr. HEIDELBERG.—Yes, that is the purpose.

Mr. LILLICK.—We will withdraw the objection.

Mr. HEIDELBERG.—I wish to make a statement to your Honor in that regard. I do not like to impeach any witness, and, furthermore, I do not like to impeach a witness when it necessitates that I take the stand. It is only just for the purpose of making good with the Court that I am putting this in, to [241] show that we did have this conversation, and that my questions to Mr. Figari were not mere bluff.

The COURT.—You are entitled to it.

Mr. HEIDELBERG.—Q. What conversation did you have with Mr. Figari at that time?

A. I went down there for the sole purpose of asking him to see the bridle that came back, the wire, I wanted to see the wire that had broke. He said that he didn't have it. I asked him if he thought Paladini had it, and he said, "No," he didn't think so. I said, "Didn't you settle up with him, or something?" He said, "Well, Pala-

(Testimony of William Carlsen.)

dini paid for a bridle." Whether he knew what he was talking about, or not, I don't know, but that is the very word he said to me. So he took me out and showed me a bridle, which was a $\frac{3}{4}$ bridle, something similar to that, there, lying on a boat. I asked him at that time if he does towing on the outside with that kind of stuff, and he says, "No, we use them bridles in the bay, we don't never do any outside towing with these bridles."

Q. Did you have a conversation with Mr. Figari in my presence at the Crowley Launch & Tugboat Co's. office on last Monday? A. Yes, sir.

Q. Just give what that conversation was.

A. I heard you ask Mr. Figari who wanted the bridle, and he told you that Martin Brown phoned to him about the bridle on behalf of Mr. Paladini.

Q. Did you hear him say anything at that time as to whether or not he knew for what purpose or use this was to be put?

A. I heard him say that if he had known what it was to be used for they never would have got it.

Q. When you were on the stern of the "Three Sisters," can you tell whether or not you noticed how the tow-rope was fastened to the "Three Sisters"?

A. The bight of the line [242] was fastened to the mast.

Q. You say the bight of the line was fastened to the mast? A. Yes.

Q. As I understand it, that means there was some rope left over? A. Yes, sir.

(Testimony of William Carlsen.)

Q. And where, if you noticed, was the balance of the rope located?

A. It was coiled right in back of the mast, toward the port side.

Q. How high was that coil of rope, would you say, just state from your best knowledge and your remembrance of it?

A. Well, approximately from a foot to eighteen inches, here. It is pretty hard to state exactly the height of the coil—say around 15 inches.

Q. Could you tell how big around in circumference it was?

A. It was about 3 feet 6 or 4 feet in diameter.

The COURT.—Q. Was it a tight coil, or was there a space in the middle of it?

A. There was a space in the middle of it.

Mr. HEIDELBERG.—Q. How much rope would you say, from your experience in handling ropes, was in that coil of rope that was on the deck?

A. I would call it on an average of 225 to 250 feet.

Mr. HEIDELBERG.—That is all.

Cross-examination.

Mr. LILLICK.—Q. How do you make that average of 225 to 250 feet?

A. By my experience that I have had in dealing with rope.

Q. Explain the mental process that you use in saying it was 225 to 250 feet in that coil?

A. Well, when you coil it up, and you have a 3½-foot diameter, you have a little over three

(Testimony of William Carlsen.)

times that much in circumference; when you get one strand and average up the number of strands that are there, you can guess by that how much rope you have there.

Q. When did you make that computation first?

A. Right after [243] the rope was made fast, after the captain lengthened it out from 50 feet to 180 feet, approximately.

Q. You looked at it and said, "Well, there is about 225 to 250 feet of rope there"? A. Yes.

Q. And that was while you were out there, was it, and before the accident happened?

A. Yes, sir.

Q. You are quite sure about that, are you?

A. Yes, sir.

Q. As to the place where the bight was—

The COURT.—Q. How many coils would you say there were there?

A. Oh, I should judge around from 20 to 25 turns were lying around there.

Mr. LILLICK.—Q. By that you mean there were 25 strands of rope?

A. Coiled around in that circle, yes.

Q. How wide was the rope out. When you say from 3½ to 4 feet, do you mean the outside?

A. I mean the outside of the circle, yes.

Q. What drew your attention to the rope that day?

A. Well, I couldn't help seeing it, I was right there by it.

Q. Did you think that the rope was too short?

(Testimony of William Carlsen.)

A. I didn't know anything about it.

Mr. HEIDELBERG.—Just a moment. That is objected to as calling for the conclusion of the witness.

Mr. LILLICK.—I have a right to call for it; he is an expert on this subject.

Mr. HEIDELBERG.—He is not an expert on towing, though.

The COURT.—He says he didn't know anything about it, and so that ends it.

Mr. LILLICK.—Q. Where was the rope coiled with relation to the mast?

A. It was aft of the mast, on the port side of the hatch; it was back of the water barrel. They had a big [244] water barrel standing on the port side of the hatch at that time, and in back of that was this coil.

Q. Was it on the hatchway, or in the alley?

A. Right off the hatch, right alongside the hatch.

Q. So that none of it was on top of the hatch?

A. I don't think so, no.

The COURT.—Q. Was it between the hatch and the wall?

A. Between the hatch and the port rail.

Q. Between the hatch and the port rail?

A. Yes, sir.

Mr. LILLICK.—Q. When you got on the boat at the dock, at Booth's dock, you told us down at the boat this morning that you walked from the port side, in front of the house, and then back to where you were injured.

(Testimony of William Carlsen.)

A. No, sir, I didn't walk in front of the house, I went through the alleyway, through the galley, the door was open in the galley, there, the cook was in there, and I walked right in through there and over to the starboard side.

Q. So that there was not any material piled up at the left-hand side of that door, there was a clear alleyway through?

A. There was a little space where the door could open.

Q. And how about right in front of that, was there any equipment in front of that?

A. You mean in front of the door?

Q. Yes.

A. Yes, the cots were all piled in front, and on both sides.

Q. You misunderstand me. I mean right in front of the door. Did you step down on to the deck and then through this alleyway and from one side of the galley to the other?

A. Yes, I walked right through the door.

Q. And you did not go around in front of the pilot-house at all? A. No, sir.

Q. After you went aft, did you sit down, or were you standing [245] around back there?

A. We were standing around and walking. We were standing up while we had our coffee, I remember that much, and then I was sitting down talking to the captain for a considerable length of time while he was cleaning the fish for me.

(Testimony of William Carlsen.)

Q. Didn't you sit on the rail on the starboard side while you were having your coffee?

A. Not that I remember of.

Q. Didn't you sit on the companionway, on the bitt in front of the pilot-house, while you were having your coffee? A. No, sir.

Q. You are quite sure of that.

A. Absolutely sure of that.

Q. Now, coming to the card game, how long after you started did you commence playing cards?

A. I couldn't say, because I don't remember the first thing about playing cards.

Q. Do you remember up to the time the change in the length of the hawser was made?

A. Yes, I remember up to that time.

Q. Up to that time where were you on the after deck?

A. I was between the engine-house and the stern of the boat at that time.

Q. Just walking back and forth, or were you standing up? A. Well, we were moving about.

Q. Do I understand that you remember nothing whatever about playing cards?

A. I don't remember nothing about playing cards.

Q. You don't remember starting to play cards?

A. No, sir.

Q. And, of course, you don't remember who produced the cards, or what you were playing for, or what kind of a game it was?

A. No, sir, only except what I heard afterwards,

(Testimony of William Carlsen.)

that we were playing whist; that is all I know about it.

Q. Was the hatch open?

A. The hatch was closed; I think they had a canvas over it at that time.

Q. Entirely covered over? A. Yes, sir.

Q. Was the companionway open in front of the boat, so that [246] you could go down into the forecastle?

A. I didn't take notice of that.

Q. Do you remember whether she had any flags out?

A. No, I didn't notice that. I didn't see any flags all the time I was on her.

Q. Did you notice what was on the house?

A. Some of the boys' bundles were there, besides all the mattresses were thrown right across the skylight by the engine-house, there, in back of the pilot-house.

Q. How many bunks were there? A. There were ten.

Q. And some of them were on top of the house, were they?

A. I am pretty sure all of the mattresses were piled across the engine-house.

Q. How about the bunks?

A. The cots were all up forward, the steel cots.

Q. All the cots were piled up forward?

A. Yes, all piled up forward.

Q. None of them in the alleyway, on the port side? A. No.

(Testimony of William Carlsen.)

Q. Where was the stove?

A. The stove was right up forward.

Q. You are quite sure of that?

A. I am absolutely sure it was, because I stepped on it when I got on from the Booth Company's dock.

Q. Do you know how the stove was loaded on?

A. I don't know how anything was loaded on, because I was not there, then.

Q. You had nothing to do with placing it on board? A. No.

Q. Was there anything on the after deck at all, except the water-barrel and the coil of rope you have testified about?

A. The water-barrel and the coil of rope, I think that is all that was on the port side; on the star-board side, where the water-barrel was this morning, was a pump.

Q. How much space did that pump take?

A. Not a great deal. [247]

Q. As much as the barrel?

A. No, I hardly think so.

Q. None of the men were sitting on the house?

A. No, I don't think they were.

Q. Who were the men who were playing cards with you? A. I don't know who they were.

Q. You don't know who was sitting with you on the after deck? A. No.

Q. Who was standing at the pilot-house in front talking to Anderson and the captain?

(Testimony of William Carlsen.)

A. I don't know that, either, only what I heard Haney say, that he was there.

Q. How many of the men were there altogether, in your crew, besides yourself? A. Eight.

Q. Will you place for me the positions as you remember them of the eight men while you and the captain were cleaning fish?

A. One fellow was in the galley shaving himself.

Q. How do you know that?

A. I seen him there.

Q. How could you see that man shaving himself from where you were on the after deck?

A. Well, I didn't see him shaving himself, but I saw him put lather on his face, he was outside when he was doing that.

Q. How could you see him from where you were on the after deck when he was on the port side?

A. He was in the galley.

Q. He was in the galley and not on the port side?

A. He was in the galley.

Q. You were down there this morning, weren't you? A. Yes.

Q. And did you notice the mirror on the left of the entrance to the galley, that is, on the port side?

A. No, I didn't pay no attention to the mirror.

Q. Where was the man shaving in the galley?

A. Over the sink, wherever that was.

Q. So you think there is a sink there, do you?

A. There is a [248] sink on the port side, there, and I suppose he was there shaving himself;

(Testimony of William Carlsen.)

he had a mirror in his hand; he had a hand mirror. I seen him with that. I seen a lot of lather on his face. I didn't see him shave himself, but I presume that is what he was going to do.

Q. So you saw him with a hand mirror in his hand in the galley, and you saw that from where you were in the rear, did you? A. Yes.

Q. And you are sure of that, are you?

A. Yes; I was standing up at that time.

Q. Where were you standing?

A. Back of the engine-house, right by the hatch that goes down into the engine-house. Ed Rowe was back there also at that time.

Q. Ed Rowe was there also? A. Yes.

Q. Have you talked to Ed Rowe about having seen the man shaving? A. No, I have not.

Q. You don't know whether Ed Rowe saw the man with a hand mirror in his hand, or not, do you?

A. I don't know, I couldn't say.

Q. Now, go ahead and place the others.

A. Ed Rowe was back there talking to me. The cook was leaning up against the engine-room. Phil Evans was in the pilot-house. George Reed was back there, and Sauder was back there.

Q. I asked you when you started to place the men to tell me where they were while you and the captain were cleaning the fish; you said you saw one man shaving in the galley, and then you changed your position to opposite the hatchway leading down into the engine-room; will you tell me now, after having had your attention called to

(Testimony of William Carlsen.)

it, whether you place the man shaving while you and the captain were cleaning the fish, or not?

A. I didn't pay no attention to whether the captain was cleaning the fish while he was shaving, or not. [249]

Q. Then let us go back to the time when the captain was with you cleaning the fish. Please, if you can, give me the positions of the various men that were in your gang.

A. The exact spot they were on?

Q. As nearly as you can remember it, yes.

A. They were scattered around the boat. It is almost impossible for me to tell you the exact spot each man was on.

Q. How many were on the after deck?

A. There were about five or six of us on the after deck.

Q. That would leave two; one of those was shaving; where was the other?

A. Phil Evans was in the pilot-house.

Q. Inside the pilot-house? A. Yes, sir.

Q. Are you quite sure of that? A. Yes, sir.

Q. When did the two men step out alongside the pilot-house, do you remember that?

A. No, I don't remember that.

The COURT.—We will be in recess until two o'clock.

(A recess was here taken until two o'clock P. M.) [250]

AFTERNOON SESSION.

WILLIAM CARLSEN, cross-examination (re-sumed).

Mr. LILLICK.—Q. You have not any very definite recollection of the events between the time you started to tow and the time of the accident, have you, Mr. Carlsen?

A. In regards to what do you mean?

Q. Any part of it.

A. No, not anything outside of what I have spoken of, that we had our coffee, and that we were walking around and talking around there until we all went and sat down back there at the place I showed you this morning. I don't ever remember leaving that place that I showed you I sat this morning.

Q. Did the cook start the fire in the galley before the launch got under way with the barge behind?

A. That I could not testify to, for I don't know.

Q. You have testified that the cook asked permission to use the galley: When did he ask that permission, if you know that?

A. The cook did not ask permission, I asked permission of the captain of the boat, myself, for our cook to use his stove.

Q. And when did you ask that permission?

A. I could not say whether it was on our way up to get the stuff, or not. I don't remember when it was. I know he gave me the permission.

(Testimony of William Carlsen.)

Q. You do remember, yourself, asking Captain Kruger whether you could use the stove?

A. Yes, sir.

Q. When you went back to the barge after loading the equipment on at Booth's, did you remain on the launch, or did you get off and get on to the barge? A. I remained on the launch.

Q. Who directed the men that put the bridle over the bits on the barge?

A. The captain of the boat.

Q. Captain Kruger? A. Yes, sir. [251]

Q. What did Captain Kruger do about ordering your men to do your work?

A. It was not my work, sir.

Q. Where was the bridle when you got down alongside of the barge, do you remember that?

A. It was lying in the stern of the boat.

Q. Did the boat back up to the barge?

A. Do you mean when we first went to the barge after loading the stuff on there?

Q. Yes.

A. I don't quite remember whether he did, or not, at that time.

Q. Who actually placed the ends of the bridle over the bits on the barge?

A. I don't know which two of the men it was. I could not testify to that. I don't remember which two of the men it was.

Q. You don't remember which of the two men did that, and yet you remember that Scotty Evans was in the pilot-house at one time: Is that correct?

(Testimony of William Carlsen.)

A. Yes, sir.

Q. At what time was Scotty Evans in the pilot-house?

A. Some time between the time he lengthened out the tow-line and the time of the accident. The last thing I remember, as I have already stated, on the boat, was that I seen Phil Evans in the pilot-house.

Q. In what position were you when you saw Evans in the pilot-house?

A. I was standing up somewhere around the starboard side of the boat, there; right the exact spot I cannot tell.

Q. How long was it from the time the line was lengthened until you lost consciousness?

A. I could not say.

Q. Was it half an hour or an hour?

A. I don't even know just exactly the time this thing did happen.

Q. Do you have any recollection at all of the time that elapsed between the lengthening of the tow-line and your losing consciousness?

A. Not only from what I have heard since the [252] accident; myself personally, I do not know.

Q. And what you have heard since the accident is what you testified to this morning, wasn't it?

A. How is that?

Q. And what you testified to this morning is what you heard afterwards, and not what you remember: Is not that the fact?

(Testimony of William Carlsen.)

A. What I testified to this morning is what I remember.

Q. And that is all you remember?

A. I remember all that I have testified to.

Q. Can you name the men who were on the barge when the "Three Sisters" backed up to attach on to the bridle?

A. There was not anyone on the barge at that time.

Q. Then they stepped off the "Three Sisters" and got on to the barge, did they? A. Yes.

Q. What men did that?

A. Well, I think they all went up there, with the exception of myself and the cook.

Q. Who told them to go up there? A. I did.

Q. What did you tell them to do?

A. I told them to go up there and pick up the anchors and clear up the lines a little bit so that if we did get into the city when it was dark we would have things in ship shape so that we could get the lines out to lie her up after we got here. That was the understanding.

Q. What happened after they cleared the lines up and got things in ship shape?

A. The captain backed his boat up and took them on board.

Q. When was the bridle put on the bitts?

A. Some time in the neighborhood of 3:30, I should judge, in the afternoon.

Q. Was the bridle put on the bitts after your

(Testimony of William Carlsen.)

men finished cleaning up the barge and getting things in ship shape?

A. No, sir, the bridle was put on the bitts right away after the men got up on the barge. The deck-hand handed the bridle [253] up to the men on the barge, and those two men put it over the bitts.

Q. You mean one on each end?

A. Yes, one on each end.

Q. How long have you gone to sea, Mr. Carsen?

A. I went to sea four or five years when I was a young fellow.

Q. Where?

A. All around; I sailed to Canada, England, Australia, Hawaiian Islands; mostly on windjammers.

Q. In what position? A. As an able seaman.

Q. So that for four years you were an able seaman?

A. Practically that time; it might have been a little longer than that, counting all of it.

Q. During that time you were in and about vessels, were you not? A. Yes, sir.

Q. And during that time you, on many occasions, saw towboats warp vessels out from shore, did you not? A. Yes, sir.

Q. During that time, yourself, on many occasions, made fast the lines which were used to tow a vessel, did you not? A. No.

Q. Isn't that a part of an A. B.'s duty on a vessel?

(Testimony of William Carlsen.)

A. It may be their part if they are asked to do it; I was not asked to do it, to make the tow-line fast; if I had been asked to do it the chances are I would have done it.

Q. Do you remember that during the four years experience you had before the mast that you on no occasion as a member of the crew of a vessel was not asked to catch a heaving line and haul up a tow-line and make it fast to a bitt? Is that your testimony? A. Yes, it is.

Q. When that hawser was made fast at the barge, where were you?

A. I was back on the boat some place, I don't know exactly the spot I was on; I was back of the engine-house, or around by the starboard side of the engine-house some place.

Q. Watching the performance, were you not?

A. Yes, sir. [254]

Q. When I remind you of it, do you not remember that you were standing on the grating just at the aft rail while they were fixing the bridle?

A. No, not that I can say; I do not know exactly where I was at the time they put the bridle up.

Q. You say you were not there; you don't remember where you were, do you?

A. I said I was back of the engine-house, on the stern end of the boat some place, but I don't know exactly where I was at that time.

Q. Would you go so far as to say you were not on that grating?

A. I was on that grating several times, but

(Testimony of William Carlsen.)

whether I was on it at that time, or not, I cannot testify.

Q. I understand you to testify you had nothing whatever to do with the orders that were given to the men in your gang who put that bridle on the bitt: Is that your testimony?

A. That is my testimony, I had nothing to do with handling of the bridle at all.

Q. Did you see the bridle at all?

A. Yes, enough to see that it was a wire, and that is all; I didn't pay much attention to it.

Q. Didn't you see how the hawser was made fast to the shackle at the end of the bridle?

A. No, sir, I didn't pay no attention to that.

Q. You paid no attention to that, as an old sailor man? A. No.

Q. That didn't interest you?

A. It didn't interest me, it wasn't any of my business.

Q. Had you ever worked on a towboat?

A. No, sir.

Q. How many feet would you say it is from the mainmast on the "Three Sisters" to the rail at the end of that grating aft?

A. You mean from the mast to the very end of the boat?

Q. To the very end of the boat, the stern of the boat. [255]

A. Well, that is all a guess; giving a guess, I would say about 15 or 16 feet, maybe. I didn't

(Testimony of William Carlsen.)

pay very particular attention even when I was down there this morning to that. It was something like that, I should judge.

Q. What are the dimensions of Crowley's Barge No. 61?

A. From what I have heard, it is 85 by 35.

Q. You say you have heard that? A. Yes.

Q. That is not based on your observation?

A. No. I never measured it. I only know what I have heard about that.

Q. Who told you that?

A. I think it was Mr. Heidelberg told me that Mr. Horton had told him. I think that is who it was. I am pretty sure of that.

Q. You have gone over the dimensions and distances involved in this case on several occasions before coming into court, Mr. Carlsen, haven't you?

A. No, not on several occasions. I stated the facts to Mr. Heidelberg as I am stating them now, all I remember of it, and that is all I know of it.

Q. How many times have you discussed the question of the distance between the "Three Sisters" and the barge before coming into court?

A. Once with Mr. Heidelberg. He asked me that question before he ever decided to take the case.

Q. That was the only occasion?

A. That is the only occasion.

Q. You have not talked it over with the other men who are going to testify in your favor?

A. No, sir.

(Testimony of William Carlsen.)

Q. Haven't discussed it in any way with them?

A. No, sir.

Q. You did not, before coming into court on Monday here, talk it over with Mr. Heidelberg?

A. No, not that particular thing.

Q. So you have only mentioned the length of this hawser and the distance between the launch and the barge on that one occasion when you went to Mr. Heidelberg and asked him to take the case?
[256]

Q. Are you as sure of that as you are of the rest of your testimony in this case, Mr. Carlsen?

Mr. HEIDELBERG.—I object to that, your Honor, as immaterial, irrelevant and incompetent.

The COURT.—It may be, but I never tried a case where it was not asked.

Mr. HEIDELBERG.—I know that, your Honor, I never heard a case tried where I didn't hear that question asked.

The COURT.—I will let him answer it.

A. Just as near as I can remember. It was never asked me more than that once, when Mr. Heidelberg took the case.

Mr. LILLICK.—Q. How big was that stove that was loaded on the "Three Sisters"?

A. The area of the top of that stove was a little bit bigger than this table where this gentleman is writing at.

Q. Do you know whether the stove was lifted on the "Three Sisters" by a block and tackle and a boom, or was it lifted on by the men?

(Testimony of William Carlsen.)

A. I don't know anything about that.

Q. It is my recollection that you said that the stove of that dimension, and some of the iron cots, were forward of the house on the port side.

A. On both sides.

Q. On both sides?

A. Forward, on both sides, the cots were.

Q. So that your testimony now is that the cots were on the starboard side of the "Three Sisters" forward of the pilot-house, as well as on the port side: Is that correct?

A. Yes, they were divided; I don't know whether there was an equal amount, but they were divided on both sides from the capstan to the rail forward.

Q. Do you remember the little companionway leading into the forecastle?

A. You mean that thing with the little top over it? [257]

Q. Yes, the little hooded affair.

A. Yes, I remember that.

Q. Were there cots on the starboard side of that.

A. Yes, there were cots on the starboard side of that.

Q. And there were cots on the port side of it?

A. Yes.

Q. And there were cots along the port alleyway?

A. I don't know anything about that, I didn't see no cots there myself.

Q. You didn't see any there? A. No.

Q. What was there?

(Testimony of William Carlsen.)

A. Suitcases and boxes. The cook had boxed up a lot of dishes and stuff. We also had a lot of groceries that were put down there. Everybody had a blanket. There were two tents. All kinds of cooking utensils, pots and pans, and stuff like that; that was strung along the whole port side. The port side was strung along from forward to aft.

Q. And some blankets?

A. Some blankets were on top of the hatch, and some were between the rail and the engine-house.

Q. Was there any place to sit on the top of the house?

A. Not unless somebody climbed up on top of the load, on the mattresses, and all that.

Q. A nice, soft seat up there, wasn't it?

A. I don't know, I never was up there.

Q. From your experience as a sailor, is it your opinion that the open deck of a launch of the size of the "Three Sisters," with a tow-line of the type that was being used then, had as a safe place upon it a position as near as you were to that hawser?

A. I don't know anything about the safety of it. I picked it out because it was the only available place for me to be at that time.

Q. Then your testimony is that the only place for you to be while you were playing cards there was at the place you occupied, seated flat on the deck: Is that true? A. That is true. [258]

Q. And there was no place for you forward?

A. I don't know; I was never told to go any place on the boat. I went right back there and I stayed

(Testimony of William Carlsen.)

there. I was never told whether there was a fore-castle there, or whether there was any other place for a man to go, I was never told by anybody.

Q. You had to duck your head once in a while, didn't you, while that hawser was swinging from one side to the other on the after deck?

A. No, sir, I never was that close to it.

Q. At what level, compared with your head, was the tow-line riding from the mast over the rail?

A. What do you mean, standing up or sitting down? When I was sitting back there, do you mean?

Q. Were you standing up a while around there?

A. I was standing up and walking around where I showed you this morning, and at that time I should judge the tow-line would be about level with somewhere around up here. (Indicating.) The tow-line was approximately about a foot above that hatch down there, as near as I can say. I did not measure it, but that is as near as I can tell.

Q. The "Three Sisters" was pitching a bit, was she not, on the way down?

A. Yes, she was pitching a bit.

Q. There was a swell, wasn't there?

A. Yes, there was a swell coming down.

Q. There was a heavy swell, wasn't there?

A. I don't know what you call a heavy swell out there.

Q. What do you call a heavy swell, as a sailor man?

(Testimony of William Carlsen.)

A. I have seen some awfully heavy swells. We had a pretty good swell for a small boat, I should judge.

Q. And that pretty good swell for a small boat meant that that boat was not only pitching, but that she was yawing, wasn't she? A. Yawing?

Q. You know what yawing is, don't you? Didn't you ever hear [259] the word "yawing"?

A. No, I don't think I have.

Q. Wasn't she also changing, as a vessel does, and moving sidewise, as well as up and down?

A. I don't know. I didn't take any notice of that. Of course a boat naturally does swing from one side to the other.

Q. Well, she was swinging from one side to the other, wasn't she?

A. A little bit, they do; you don't steer it exactly straight.

Q. Was the barge sheering from side to side?

A. I didn't take any notice of that.

Q. You didn't take any notice of that? A. No.

Q. You didn't notice the barge, at all?

A. Not after he got outside with it, no. I left all that to the captain.

Q. I am speaking of the time outside after you had lengthened the tow-line. Was not the barge swinging from side to side, sheering?

A. I didn't take any notice of that, no.

Q. You didn't notice that at all? A. No.

Q. Do you mean to testify that you did not have to move your head at any time while you were

(Testimony of William Carlsen.)

sitting there playing cards, to avoid having the hawser touch you?

A. Yes—not that I remember of did I ever move my head for the tow-line.

Q. How close was the tow-line to you when you were sitting down?

A. It was a matter of two or three feet from me, I suppose.

Q. You say two or three feet?

A. Well, between two and three feet, I should judge, from where we were.

Q. Then do you remember something about the situation after you had commenced to play cards, do you?

A. No, I don't. The only reason I said that was seeing the size of the boat this morning from where we were to the center of where the tow-line was made fast, and I judge that the distance from there to where we would be would be approximately two feet six, or such a matter as that. [260]

Q. In the balance of your testimony, in which you have answered my questions, Mr. Carlsen, are you answering them from what you saw down at the boat this morning, or from what actually occurring at the time.

A. I have answered everything as actually occurred at the time.

Q. And now you tell me that that hawser, while you were sitting there was, you say, two feet away from you?

(Testimony of William Carlsen.)

A. I said between two and three feet, as near as I could guess, yes.

Q. Are you basing that upon what you saw this morning as to the width, there, or upon what actually occurred that day?

A. Partly. I did not exactly remember the width of the boat. In fact, I don't know exactly the width of the boat right now.

Q. Mr. Carlsen, do you remember now that while you were playing cards there you knew that the hawser was a certain distance from you?

A. I cannot tell you anything about that, because I don't remember playing cards at all.

Q. Then you don't remember how far the hawser was from you either, do you?

A. I remember we were sitting back there against the rail, four or five of us at the time, and I don't remember whether we started to play cards there, or what we did. I should judge that when I first went back there I was sitting with my feet forward.

Q. Let me here ask you this: You do remember of the situation after the tow-line was lengthened; you were sitting, as you now say, with your back to the stern and your feet forward, looking forward: Is that correct?

A. That is the way I sat myself down in the first place, yes.

Q. And after you had seated yourself in that way, how long did you remain in that position?

A. I don't remember that, I cannot exactly say.

(Testimony of William Carlsen.)

Q. And you don't know how long after that it was until the [261] accident occurred? A. No, sir.

Q. And you don't know whether you played cards, or not? A. No, sir.

Q. And you don't know, if you did play cards, what kind of a game you played? A. No, sir.

Q. Do you remember whether you were playing for money, or not? A. No, sir.

Q. Do you remember the names of the men who were playing with you?

A. Only on what I have heard afterwards.

Q. Was Scotty Evans one of the men who played with you?

A. I don't think so, because I don't think he can play cards, I don't think he ever plays cards. I know that from previous experience with him.

Q. That is why you say he didn't play cards with you, then? A. I don't think he did.

Q. It was not because he was in the pilot-house, was it?

A. He couldn't have played cards and be in the pilot-house at the same time.

Q. In time, I would like to have you approximate for me how long after the tow-line was lengthened it was when you noticed the coil of the tow-line that you testified to this morning just aft the mast.

A. How is that? How long after it was lengthened out that I noticed that?

Q. Yes.

A. Immediately after they made the bight fast.

Q. Had you sat down at that time?

(Testimony of William Carlsen.)

A. I don't remember whether I sat down, or whether I was standing up at that time.

Q. How many coils were there in it?

A. I testified to that this morning.

Q. How many coils were there in it?

A. From 20 to 25.

Q. In your opinion as a sailor, and with your experience as a man who has been superintendent on a pile-driver, was the cable [262] used in that bridle of sufficient strength to make that tow?

Mr. HEIDELBERG.—That is objected to as immaterial, irrelevant and incompetent. He has never had any towing experience. It is calling for the conclusion of the witness. He has not been qualified.

The COURT.—I will overrule the objection.

A. I could not say because I didn't take notice of the bridle and really didn't know what size bridle it was. At that time I paid no attention to the condition of it, or what it was.

Q. Do you think that a $\frac{3}{4}$ -inch malleable iron cable would be sufficient? A. No, sir, I don't.

Q. Do you think $\frac{7}{8}$ would.

A. I hardly think the $\frac{7}{8}$ would.

Q. What size do you think would be necessary?

A. I should think at least an inch cable, or an inch and a quarter for an outside tow.

Q. And your answer would be the same for a steel cable?

A. Yes, sir. That is my honest opinion about it. I am not a practical towboat man, but that is my opinion about that.

(Testimony of William Carlsen.)

Mr. LILLICK.—Q. For an outside tow?

A. For any outside tow, or if there is any swell, I should judge so, yes.

Q. What difference would the weight of the barge or towboat make with reference to the size of the bridle that you have been asked about as $\frac{3}{4}$ of an inch and a size of 1 inch can you tell me?

A. No, I cannot, because I am not a practical towboat man.

Q. Then upon what did you base your opinion a moment ago that $\frac{3}{4}$ -inch cable was not sufficient, and an inch would have been?

A. I think a $\frac{3}{4}$ cable is too small a cable, from what I have seen around the bay, here.

Q. Then, you have had some experience around the bay, have you?

A. I have been on pile-drivers on barges that have been towed inside the harbor. [263]

Q. What size do they use there?

A. They use $\frac{3}{4}$ to $\frac{7}{8}$ inside, here.

Q. Do they use anything larger than a $\frac{7}{8}$?

A. I don't think a launch does, but sometimes if you get a Red Stack towing going up the river they will have something bigger.

Q. On what tow-line do you know of any Red Stack ever to use a bridle in towing up the river?

A. I never saw any.

Q. Then what did you have in mind a moment ago when you spoke of a Red Stack tug towing up the river?

(Testimony of William Carlsen.)

A. They use the tow-line they have on them already.

Q. A manila hawser?

A. No, not lately; lately they use wire, and then also they have a spring engine on it.

Q. You mean a towing machine?

A. Yes, something like that.

Q. Do you know anything about the weight of the barge and the pile-driver on it that the "Three Sisters" towed down that day?

A. The barge, I presume, would weigh around from 400 to 450 tons.

Q. That is, you mean coming down? A. Yes.

Q. And the "Three Sisters" weighed, with all of your equipment on her, how much?

A. I have no idea about the "Three Sisters."

Q. As a sailor, I will tell you her gross tonnage was 28.

A. I don't know the dimensions of her or the weight of her.

Q. I just told you that her tonnage was 28; that means nothing to you as to displacement of the vessel? That means nothing to you, does it?

A. Well, I don't know that it does. I never considered the size of the boat or the weight of it at all at any time.

Q. You have just said that the barge and the pile-driver weighed together from 400 to 450 tons.

A. Yes.

Q. Now, in the same manner, will you tell me what you think the "Three Sisters" weighed?

(Testimony of William Carlsen.)

A. You mean the boat, and the whole [264] thing?

Q. Exactly.

A. Well, I should judge maybe 80 or 90 tons.

Q. And you say that in your opinion the bridle was not of sufficient strength to make that tow?

A. I don't think so, no.

Q. You don't think so? A. No.

Q. Did you think so then?

A. I didn't know what size it was, then.

Q. You saw it taken off the "Three Sisters," didn't you?

A. I just seen it enough to know that it was a wire, and that is all. I didn't pay no attention to the size of it, or nothing. It was not my business to interfere with it.

Q. Then why did you notice the distance between the launch and the barge if, before your eyes, on the after part of the "Three Sisters," the bridle, itself, was taken up and attached by your men?

Mr. HEIDELBERG.—I object to that question, your Honor, as argumentative.

The COURT.—Objection overruled.

A. I could not help but taking notice of the distance, because I was standing watching them slackening it back and making the line fast.

Mr. LILLICK.—Q. So you watched them slackening it back? A. Yes.

Q. Then you do remember something more than you testified to this morning, don't you? How many feet between the hawser, as it left the rail

(Testimony of William Carlsen.)

of the "Three Sisters" at the stern was it before it touched the water, while you were looking at it?

Mr. HEIDELBERG.—At what time do you mean?

Mr. LILLICK.—Just when he testified to now, that he was looking at them slackening it out.

Mr. HEIDELBERG.—He has given no testimony that he saw it [265] touch the water.

A. I didn't see it touch the water at all.

Mr. LILLICK.—Q. So it is your testimony that the hawser from the rail of the "Three Sisters" to the bridle on the barge did not touch the water?

A. Not that I know of. It touched the water when they slacked it off; of course, when you slack a line off it runs right out.

Q. When they slacked it off, where did it go into the water?

A. I didn't pay no attention to that, particularly.

Q. You don't know whether it was ten feet or 30 feet from the after part of the boat?

A. I do not, no, sir.

Q. Do I understand you, Mr. Carlsen, to say, as you did a moment ago, to testify, when the tow was under way, after the line had been made taut, that the hawser did not touch the water during the tow?

A. I testified that I did not notice whether it did, or not, at any time.

Q. Then you don't know whether it did, or not?

A. No, sir.

(Testimony of William Carlsen.)

Q. And you don't know whether the hawser was in the water, at all?

A. I don't know anything about that, at all.

Q. You cannot tell me whether on the receding swells and as the tow was being made, the hawser went out of the water or went into the water coming down? A. I could not tell you, no, sir.

Q. You didn't notice that? A. No, sir.

Q. Did you notice any jerking at all on the "Three Sisters" as the tow was being made, after the line had been lengthened? A. No, sir.

Q. So that it was perfectly smooth and a steady pull?

A. No, sir, it was not perfectly smooth. There was quite a good ground swell out there. The boat was going like that, as any boat will. I did not notice any particular jerk at any time, though.

Q. You said the captain came out of the engine-room, and that [266] he had speeded up the boat; was that your testimony?

A. I said that he came out of the engine-house and he said, "How do you like the speed of her now?" Whether he had slowed her up or whether he had speeded her up, that I don't know. I don't know what he done to her at all.

Q. You don't know whether she was running at half speed or full speed then?

A. No, sir, I don't.

Q. Did someone else tell you that Scotty had steered the boat for a while? A. No.

Q. Or did you see him yourself?

(Testimony of William Carlsen.)

A. I seen him myself. I seen him in the pilot-house, myself.

Q. Where were you when you saw him in the pilot-house?

A. I was back on the starboard side, back of the engine-house some place.

Q. And do you mean to tell us that you could tell that he was steering, or had his hand on that wheel? A. Absolutely.

Q. You were flat on the deck, were you?

A. How is that?

Q. You were standing on the deck, were you?

A. Yes, sir.

Q. Do you remember that the galley is between the after part of the pilot-house and the wheel-house? A. Yes, sir.

Q. And you think that wheel is in a position where you could see from the deck by the engine-house? A. Yes, sir.

Q. This morning, Mr. Carlsen, on direct examination you testified that Scotty Evans was steering the boat while you were cleaning fish; was it then that you noticed him steering the boat?

A. I never testified to you that I did clean fish.

Q. Then we will put it this way: When you testified this morning, you testified that at the time Kruger came back and showed you how to clean fish that Scotty Evans was at the wheel; is that true?

A. Kruger never came back there and showed

(Testimony of William Carlsen.)

me [267] how to clean fish, Kruger came back there and cleaned the fish.

Q. Put it this way: This morning you testified that at the time Kruger came back—to clean the fish, do you say? A. Yes.

Q. —that Scotty Evans was at the wheel: Is that true?

A. Yes, I think he was at the wheel at that time. I say he was steering the boat at that time.

Q. Did you see him then?

A. I seen him at the wheel, there, yes, but I don't know just exactly to the minute that he was there, or how long he was there. I cannot testify to that, but I know that he had the wheel.

Q. One more question on the distance between the barge on the "Three Sisters." After the accident you were unconscious, were you not?

A. Yes, sir.

Q. For what length of time did you remain unconscious?

A. I cannot tell you; that is, I do not know as to the time that expired. I don't remember much of anything until Saturday; that is, it seems like a dream to me. I cannot tell you what transpired in the meantime. I don't remember anything. I remember being transferred from the Central Emergency Hospital to the St. Francis Hospital on Saturday, in the daytime, I know it was daytime. That is the first I can say that I remember.

Q. Will you take time to consider this, please; tell me how long it was after the accident when

(Testimony of William Carlsen.)

you first thought of the length of the hawser between the "Three Sisters" and the barge.

A. It might have been a week or so, when I began to come to myself, that I was thinking of it, that I began to think about the accident and how it really happened to me.

Q. And then you started to figure out how long the tow-line was?

A. I knew how long the tow-line was; that is, I had that in my mind right then in regard to the length of the tow-line. [268]

Q. How long was the tow-line on the trip up, when you started out from here first, do you remember that?

A. No, sir, I don't know anything about it when they started from here, I was not on the boat then, but when we passed the "Three Sisters" with the "Corona" I should judge then he had a line out, as near as I could guess from where I was, of around 450 feet.

Q. That was on the up trip?

A. On the up trip, yes.

Q. How many spars were there on the barge on that up trip? A. I could not truthfully tell you.

Q. About how many were there?

A. I couldn't say unless I made a guess at it. You can get that from Healy-Tibbitts. They loaded it, I didn't load it.

Q. You would have to guess at that?

A. I didn't count them.

(Testimony of William Carlsen.)

Q. You drove those very piles at the pier, though, didn't you?

A. Yes, I drove those very piles, and more, too.

Q. And they were taken up for the purpose of building that very pier?

A. Yes. I don't even remember now how many were driven over there; I couldn't tell you truthfully.

Q. Have you no recollection as to how many you took up on the barge?

A. No, sir. I didn't know how many were loaded on the barge. I know that we put an addition to the dock, and also we put in extra piles for brace piles and mast over there. All told how many piles are in there I couldn't tell you, I do not now remember.

Q. How much of the space on the barge was taken up by the pile-driver?

A. There were several tiers of piles.

Q. You do remember something about it, then, don't you.

A. I remember something about it, but I would not say how many there were.

Q. Would you say there were 50 piles?

A. Yes, sir, I would say 50. [269]

Q. Between 50 and 100?

A. Somewhere in there.

Q. Were they creosoted?

A. Some were creosoted and some were green.

Q. The barge was very much heavier on the up trip than on the down trip, wasn't it?

(Testimony of William Carlsen.)

A. Yes, she was heavier loaded on the up trip than coming down.

Redirect Examination.

Mr. HEIDELBERG.—Q. When did you first consult Mr. Joseph McShane as your attorney in this case?

A. It was around five or six weeks after the accident.

Q. And he was the first attorney you consulted?

A. Absolutely.

The COURT.—Q. When was anything said to Mr. Paladini about a claim being made?

Mr. HEIDELBERG.—Your Honor, Mr. McShane will show when he made the claim; that is just exactly what I was laying a foundation for.

The COURT.—All right.

TESTIMONY OF PHILIP EVANS, FOR CLAIMANTS.

PHILIP EVANS, called for the answering claimants, sworn.

Mr. HEIDELBERG.—Q. What is your business, Mr. Evans? A. Pile driver.

Q. How long have you been a pile driver?

A. Since the fire, 1906.

Q. In the month of May and the first part of June, 1923, where were you working?

A. Over at Point Reyes—Drake's Bay.

Q. Calling your attention to June 8, 1923, as the day that you left there, I will ask you what boat did you leave there on upon that day?

(Testimony of Philip Evans.)

A. The "Three Sisters."

Q. How long was it before you left there for the last time that you had seen the "Three Sisters"; how long had she been in Drake's Bay before you left? How long had the "Three Sisters" [270] been in Drake's Bay before she finally left on that last trip on which you came down?

A. I couldn't tell you that.

Q. Don't you know whether it was one day or three days?

A. You mean how long she stayed there before we left?

Q. Yes.

A. Well, I guess it must have been about a day or two.

Q. Do you remember when she arrived there for her last trip down?

The COURT.—There is no dispute about that, is there?

Mr. HEIDELBERG.—No, your Honor, but I was just leading up to that conversation.

Q. When the "Three Sisters" arrived at Drake's Bay for the last time, did you hear any conversation between the captain and Mr. Carlsen?

A. Not that I know of.

Q. You don't know of it? Did you come back and forth from Point Reyes during the time you were up there from May 10 to June 8, 1923?

A. I did, yes.

Q. You didn't stay up there all the time, though, did you?

(Testimony of Philip Evans.)

A. No, I went home every Saturday.

Q. And when you would come home what boats would you come on?

A. I came down on the "Three Sisters," and I came down on the "Corona."

Q. How would you go back up to Point Reyes?

A. Went back with the steamer again.

Q. With what steamer?

A. With the "Three Sisters." I went back a couple of times on her, and the same way on the "Corona," back and forth.

Q. When you got on the "Three Sisters" to go back this last time, did you ask the captain's permission to go upon her? A. No.

Q. When you got on the "Three Sisters," where did you go, on what part of the boat were you?

A. I was on the forepart of it, that is, when I got aboard and got everything all secured. [271] That was on the way home, you mean?

Q. Yes. A. Yes, sure.

Q. Were you on the barge some of the time while the barge was being towed from Drake's Bay to San Francisco? Were you on the barge at any time?

A. No, I never was on the barge from the time I left her until I went down on the steamer.

Q. You were not on the barge at the very first, helping to pull the anchor, there?

A. Sure, I was on her then, yes.

Q. And then later on, after that, you got off the barge and on to the "Three Sisters," did you?

(Testimony of Philip Evans.)

A. Yes, after we got everything secure and ready for towing out.

Q. Did you ever go into the wheel-house at any time during this trip down? A. I did.

Q. What did you do in there?

A. I took the wheel for a few minutes.

Q. And you steered the boat? A. I did.

Q. Where was the captain at that time, if you know? A. He was out on deck somewheres.

Q. Where was the deck-hand?

A. He was doing something else, I don't know what he was doing, but he is the one that relieved me.

Q. He relieved you finally? A. He did.

Q. Did you notice the barge as it was being towed on the outside after you had passed the bell buoy, did you notice the barge after that time?

A. After we passed the bell buoy?

Q. Yes.

A. No, I didn't, I never paid no attention to her.

Q. You didn't pay any attention to the barge after that time? A. No, sir.

Q. Did the captain or anybody else ever tell you upon what particular part of the boat you were to stay? A. He never said [272] a word.

Q. Did the captain ever warn you about not going to any particular location on this boat?

A. No.

Q. You were on board the boat when Mr. Carl- sen and Mr. Sauder were injured? A. Sure.

(Testimony of Philip Evans.)

Q. What did you do then?

A. I was in the kitchen at the time the accident happened.

Q. Then what did you do after the accident?

A. I came out on deck.

Q. Did you help Mr. Carlsen in any way?

A. I went right back there and hauled the tow-line in, the hawser, and then I went and attended to them.

Q. Where was Mr. Carlsen when you hauled the hawser in? A. He was lying down.

Q. Where was he lying down?

A. He was lying down in the after part of the house.

Q. Was he on any rope, or anything like that?

A. Yes, I think he was lying on the rope, there.

Q. Was it on the same rope that you were pulling in?

A. The same rope, yes. The other end of the rope was aft; it was lying there on deck all coiled up. This was thrown down and that was all.

Q. Was Mr. Carlson placed on this wet rope as you pulled it in?

A. No; it was the other part of the hawser that was lying on deck, and he was laid right on top of the hawser.

Q. When you pulled the hawser in, was any part of the bridle and swivel attached to it?

A. Yes, the swivel and the bridle were on to it.

Q. What did you do with them?

(Testimony of Philip Evans.)

A. I laid them on the deck, and I never touched them from that day to this.

Q. You saw Mr. Sauder injured, too, didn't you?
[273]

A. Yes, sure I did; I was right there with both of them all the time until we got into port.

The COURT.—Q. How much line did you have out, how much hawser was there out?

A. Somewhere close on to 200, as near as I can judge; there maybe a little more or a little less, I don't know.

Mr. HEIDELBERG.—I think that is all.

Cross-examination.

Mr. LILLICK.—Q. You didn't pay very much attention to the hawser's length, did you?

A. No.

Q. There was not any more reason for you to watch that than there was the steering of the boat, was there? A. No.

Q. You boys just got on the "Three Sisters" up there and piled aboard her to ride down home: Wasn't that it? A. Yes.

Q. When the chap was at the wheel, you, as an old sailor man, were there talking to him, weren't you?

A. I spoke to him several times there at the wheel.

Q. And while you were there, as sailors will do, he probably asked you to take the wheel for a minute? A. He didn't.

Q. Didn't he? A. No.

(Testimony of Philip Evans.)

Q. How did it happen, then?

A. I took it myself, I relieved the deck-hand.

Q. You mean Anderson? A. Yes.

Q. Anderson wanted to go below for a minute, did he?

A. Well, he had something to attend to, I guess; I was not there very long before he came back and relieved me again.

Q. Can you remember about when that was with reference to when you lengthened out the line, whether it was before or after that that you took the wheel?

A. It was lengthened out before I took the wheel.

Q. Long before you took the wheel?

A. Oh, yes. [274]

Q. How long would you say you stayed at the wheel?

A. I don't think I was there ten minutes.

Q. And was that before the rope broke?

A. A long time before that.

Q. So it had nothing to do with the breaking of the bridle, did it?

A. Oh, no, that was a long time before that.

Q. Did you help the other boys get the stuff on deck? A. Yes, sir.

Q. When that was put on deck, do you remember where the stove was put?

A. Yes, it was on the forepart of the pilot-house.

Q. On the forepart of the pilot-house.

A. Yes, sir.

(Testimony of Philip Evans.)

Q. How did the boys get that down?

A. They just helped one another to get it down off the deck.

Q. They didn't take it down with a boom and tackle, did they? Don't you remember that they used the boom and tackle with it because it was heavy?

A. Well, when they got that stove down aboard I was packing down the other stuff on the dock. I guess they did.

Q. It was pretty heavy, wasn't it? A. Yes.

Q. You remember the tackle they had to take the barrels off, don't you? A. Yes.

Q. And don't you remember they put that tackle, one on each side of the stove, and that they just swung it right over on to the launch?

A. I don't know; I was not there at the time.

Q. You were not there when they did that?

A. No. I was busy doing something else, I guess.

Q. Do you remember the small ropes the "Three Sisters" had on, what they were—her spring line, and her stern line?

A. No, I didn't pay much attention to her lines.

Q. She had some lines aboard while she was moored there, didn't she?

A. She had her lines to make herself fast.

Q. You don't remember where those lines were piled, do you? A. No. [275]

Q. In order to remind you of it, do you remember that when she went away from the dock they just threw those ropes on the deck?

(Testimony of Philip Evans.)

A. I don't know what they done with them.

Q. They were on the deck somewhere, weren't they?

A. Oh, they were on the deck somewheres, I suppose, but where they were I do not know.

Q. Have you any recollection of the size of those lines?

A. They were smaller lines than the hawser was.

Q. About three-inch lines?

A. What I would call three-inch lines, yes, as a rule.

Q. Do you remember the boys playing cards on the back of the launch?

A. I didn't pay any attention to that at all, I was not around there at all at the time they were playing.

Q. You don't know who was forward and who was aft? A. No.

Q. Do you remember the little place in the galley where the mirror is, at the left of the stove?

A. Yes, I think that I do.

Q. Do you remember where that man was shaving that morning?

A. Yes, I was talking to him in there.

Q. You couldn't see that man, where he was shaving, from the after portion of the "Three Sisters," could you?

Mr. HEIDELBERG.—That calls for the opinion and conclusion of the witness, your Honor.

Mr. LILLICK.—No, it doesn't, it calls for what he could see.

(Testimony of Philip Evans.)

The COURT.—I will overrule the objection.

A. What is that again?

Mr. LILLICK.—Q. Where that man was shaving at that mirror, on the port side, you cannot see from the starboard quarter of the deck aft who is at that mirror, can you?

Mr. HEIDELBERG.—If your Honor please, I may not be a seafaring lawyer, and I don't know what they mean by "aft," just [276] how far, or whether it has any particular crossing line, or not, but it would certainly depend a great deal upon what the word "aft" means, and where the person was located. Without placing him definitely and specifically at some certain place, I do not see how this man can answer the question.

The COURT.—I think that is true, Mr. Lillick.

Mr. LILLICK.—There may be something in that, your Honor, but, judging, or rather, considering where that mirror was, I do not think a man at the mirror could be seen from any part of the after deck.

The COURT.—Q. Do you know where Mr. Carlsen and the other men were playing cards on the after deck? A. What is that?

Q. Do you know that Mr. Carlsen and three others were playing cards on the after deck?

A. Yes, sir.

Q. You saw them there?

A. No, I didn't pay any attention to them at all.

Q. Do you know where they were playing cards?

(Testimony of Philip Evans.)

A. They must have been playing cards aft somewhere.

The COURT.—Evidently he does not know.

Mr. LILLICK.—No, he does not know.

Q. You were in the forward part of the launch at the time of the accident?

A. I was in the kitchen, between the pilot-house and the engine.

Q. Were you there when they lengthened out the tow-line? A. No.

Q. Where were you then?

A. I was on the barge when they lengthened it out.

Q. You were on the barge when they lengthened it out? A. Yes.

Q. And then the "Three Sisters" came back alongside the barge? A. Yes, and picked us up.

Q. Where did you hop aboard the "Three Sisters"? A. She backed right up to us. [277]

Q. And where did you go when you got on board the "Three Sisters"?

A. I walked right along forward.

Q. And you went in the galley?

A. We had something to eat.

Q. Where did you have that?

A. In the forward part, alongside the house.

Q. Alongside the house, in the forward part of the vessel?

A. Yes, between the pilot-house and the after part of the house.

Q. Along that alleyway?

(Testimony of Philip Evans.)

A. Yes. There was no other place where we had room to eat; some of us were in the galley.

Q. After you had what you wanted to eat, did you go in the galley?

A. I laid around the deck a little while and had a smoke.

Q. And then where did you go?

A. I went in the alleyway there.

Q. Why didn't you go back alongside of that line the way the other boys did?

Mr. HEIDELBERG.—That is objected to as immaterial, irrelevant and incompetent.

The COURT.—Objection overruled.

Mr. LILLICK.—Q. (Continuing.) You thought it was a little dangerous back there, didn't you, alongside of that hawser?

Mr HEIDELBERG.—That is objected to as immaterial, irrelevant and incompetent, as to what this man thought about it. It is immaterial what he thought about it; it is only material as to what Carlsen and Sauder thought about it.

The COURT.—No, not at all. This man is an old sailor. He has a right to give his opinion. Objection overruled.

Mr. LILLICK.—Q. (Continuing.) You didn't want to go back there alongside that hawser, did you, when there was a place in the alley? A. No.

Q. Is it not true that wherever there is a hawser like that on a towboat you keep away from the hawser? A. Yes.

Q. And it is generally known among the seafar-

(Testimony of Philip Evans.)

ing men that if that [278] hawser snaps somebody is going to get in trouble; that is true, isn't it? A Yes, sir.

A. And the reason you didn't go back there was because you were in a safe place up there in that little alley where you would not get hurt?

A. Yes, it was about as safe a place as any.

Q. It was a great deal safer than back there where the hawser was, wasn't it? A. Sure.

Q. And that is why you were there; that is true, isn't it?

A. Well, there was not much room about the boat, and I suppose everybody could suit themselves.

Q. And you suited yourself by going in a safe place; that is true, isn't it?

A. Yes, that was a safe place to be.

Redirect Examination.

Mr. HEIDELBERG.—Q. Mr. Evans, had you ever seen anybody injured during your lifetime with a tow-line like this? A. Yes, I have.

Q. When did you see that happen?

A. A good many years ago.

Q. What happened at that time, how was the injury sustained? A. The hawser carried away.

Q. How did it carry away.

A. The bitt gave way.

Q. Where was the bitt?

A. On the fore-castle-head.

Q. You never saw a hawser whip back over the stern of a vessel like this one, did you? A. No.

Q. So when you say that you thought it was a

(Testimony of Philip Evans.)

safe place, do I understand you to say that you had really considered whether the back end was safe, or was dangerous—you didn't consider that at all, did you, Evans?

Mr. LILLICK.—Objected to as leading and suggestive, and particularly leading just after the court has taken a short recess.

The COURT.—It is a pretty leading question.
[279]

Mr. HEIDELBERG.—Q. Do I understand you to say that when you got on this boat you even considered what part of the boat was safe and what part of the boat was dangerous?

A. Any part of the boat, so far as that was concerned—it was every man for himself, to look out for himself.

Q. Again I ask you, when you got on board the "Three Sisters," did you think in your own mind as to what part of the boat was dangerous and what part of the boat was safe?

Mr. LILLICK.—Objected to as immaterial, irrelevant and incompetent, and not within any of the issues of the case.

The COURT.—Objection overruled.

Mr. LILLICK.—I think I will withdraw the objection. I will strike it out entirely if the Court will permit me.

Mr. HEIDELBERG.—Q. Can't you answer that question? Don't you know what it is?

A. The safest part of the boat?

(Testimony of Philip Evans.)

Q. Did you consider whether any part of that boat was dangerous or not?

A. No, I didn't consider anything like that, not at the time.

Q. Of course, you knew afterwards, when the tow-line broke and snapped back, you know now that that part of the boat was dangerous?

A. Yes.

Q. But you did not stop and consider that when you got on the boat, did you? Well, you don't seem to understand. That is all.

Recross-examination.

Mr. LILLICK.—Q. Mr. Evans, you knew it was a dangerous place before, didn't you?

A. Well, that is the rule.

Q. That is the dangerous part of the boat when they are towing, isn't it? A. As a rule, yes.

[280]

TESTIMONY OF WALTER H. CARLTON,
FOR PETITIONER,

WALTER H. CARLTON, called for the petitioner, sworn.

Mr. LILLICK.—Q. In May of 1923, Mr. Carlton, what connection had you, if any, with A. Paladini, Inc.? A. What connection did I have?

Q. Yes, what position did you have with them?

A. Port engineer.

Q. What, if anything, did you have to do in ob-

(Testimony of Walter H. Carlton.)

taining the hawser that was used by the "Three Sisters" in towing the barge up to Point Reyes about May 8th or 10th? A. Nothing.

Q. From whom was the hawser obtained, do you know?

A. From the Associated Trawling Company.

Q. Who got the hawser from them? A. I did.

Q. When?

A. Just after the trawling company broke up.

Q. Where had the hawser been in the meantime?

A. It was between pier 23 and pier 21, on the bulkhead, upstairs; I put it up there after we moved.

Q. When did you see the hawser last before the towing of the barge and pile-driver up to Point Reyes?

A. I used it to tow the "Iolanda" over to Crowley's shop with the "Three Sisters."

Q. Do you know whether the hawser was of the same length when the tow up to Point Reyes was made by the "Three Sisters"?

A. It was never cut, so far as I remember.

Q. How long was it when the tow up to Point Reyes was made?

A. When I took it off the wharf, there, it was, on an average of between 90 and 100 fathoms.

Q. And how long was that before the tow up to Point Reyes was made?

A. I cannot give any date.

Q. Would you say it was the week before, or the day before? A. No, it was a long time before.

(Testimony of Walter H. Carlton.)

Q. Did you see it at any time while the tow was being made up to go to Point Reyes with the pile-driver?

A. I saw it on [281] the wharf, yes, sir.

The COURT.—Q. Did you buy that hawser?

A. No. We had it at the trawling company when I was port engineer there.

Q. Did Paladini buy it from them?

A. Yes, sir.

Q. Are they sold by the fathom, or by the pound?

A. By the pound.

Mr. LILLICK.—Q. When you saw it, when it was on the barge, how long was it?

A. About the same length.

Q. Did you see the bridle that was used by the "Three Sisters" to tow the barge up to Point Reyes?

A. The only time I saw the bridle was on the barge at Pier 23, the next morning. I never went on board, and I had nothing to do with it.

Q. By "the next morning," what do you mean?

A. The morning of the tow.

Q. You mean the tow up? A. Yes.

Q. Did you make any examination of it at that time?

A. I just went and looked at it, and I saw that it looked all right. It was about a $\frac{7}{8}$ cable, I think it was, and it was galvanized.

Q. How about the thimble and the swivel, what material was that?

A. It was a regular forging, galvanized.

(Testimony of Walter H. Carlton.)

Q. Do you know whether or not the swivel was turning on the pin, or whether it was frozen by rust, or otherwise?

A. No, it was not frozen, it was turning.

Mr. HEIDELBERG.—I think that is slightly leading, Mr. Lillick.

Mr. LILLICK.—I think not when I put it both ways. However, the question has been answered.

The COURT.—I think that is all right; I think that question is all right.

Mr. LILLICK.—Q. Mr. Carlton, while you were port engineer, and when your instructions were given to the captains of the “Three Sisters” and the “Corona,” what, if anything, were your [282] orders with reference to taking up and bringing back the men who were working on this job?

Mr. HEIDELBERG.—That is objected to as being leading and suggestive.

The COURT.—No, I don't think it is leading; he is simply asking him what his orders were. There is no suggestion as to what the answer should be.

A. I didn't have no orders at all regarding that.

Cross-examination.

Mr. HEIDELBERG.—Q. When was the last time you say you saw this tow-line, Mr. Carlton?

A. I think it was about a day before the barge was towed up on the wharf, there.

Q. Where did you see it at that time?

A. Pier 23.

Q. How long before that time had you seen it?

(Testimony of Walter H. Carlton.)

A. Oh, I have seen it right along there, because I was on the wharf every day.

Q. You were on the wharf every day?

A. Yes, sir.

Q. You were on the wharf every day up to the time you left the employ of A. Paladini as port engineer? A. Yes, sir.

Q. You saw these boats come in and go out, didn't you? A. Yes.

Q. Did you ever see the "Three Sisters" come in from Point Reyes? A. With the fish, yes.

Q. Did you ever see the "Corona" come in?

A. Yes.

Q. Did you see the "Corona" come in from Point Reyes with these men on board?

A. I was not on the wharf during the time the wharf was being built.

Q. I mean in San Francisco.

A. I mean I was not on the wharf in San Francisco during the time the wharf was being built.

Q. You mean now the wharf at Point Reyes.

A. Yes, because I had left the employ of Paladini then.

Q. When did you leave the employ of Paladini?

A. I really don't know what date it was, I would have to look it up. [283]

Q. Do you know who it was that succeeded you in your position as port engineer? A. Mr. Davis.

Q. Do you know whether he immediately succeeded you, or not, or whether there was a lapse of time afterwards? A. Immediately.

(Testimony of Walter H. Carlton.)

Q. Don't you remember when that was?

A. No.

Q. You mean to say, then, you were not on the wharves in San Francisco, or not in the employ of A. Paladini at any time during the building of this wharf.

A. I may have been down on the wharf, because I was working for the Enterprise Diesel Engine Co. then and I had occasion to go on the boat.

Q. Can't you remember when you entered the employ of the Enterprise Deisel Engine Co.?

A. I think it was some time in May.

Q. As a matter of fact, weren't you in the employ of Paladini on May 15, 1923?

A. I would not say for sure.

Q. Don't you know as a matter of fact that you did not leave Paladini's employ until right close to the last day of May?

A. I would not say any date; it may have been then, but I don't know what date it was.

Q. Do you mean to say that the lines on the bridle were galvanized? A. Yes, sir.

Q. Are these galvanized, referring to Claimant's Exhibit "A"?

A. Yes, those are galvanized.

Q. And yet those are rusted, aren't they?

A. A little bit, not much.

Q. What was the condition of the tow-lines on the bridle of this one used to tow that barge up there? A. You mean the tow-line?

(Testimony of Walter H. Carlton.)

Q. The bridle. A. It was not rusted.

Q. It was not rusted at all?

A. It was galvanized. There was a little black tar on it. [284]

Q. It was not rusted at all? A. No, sir.

Q. Did you examine the swivel that day carefully? A. I just looked at it.

Q. How far away from it were you when you looked at it? A. About two feet.

Q. How can you say it was turning freely and not frozen fast?

A. You can tell by looking at it lying on the ground.

Q. Could you tell from this one whether it worked freely or not?

A. I can if I get close enough to it.

Q. Come down and look at it. You turned it over, didn't you? A. That is what I did.

Q. You did do that? A. Yes.

Q. I thought you said you didn't touch it. I thought you said you looked at it from two feet away.

A. I may not have touched the swivel, but I touched the cable.

Q. But you touched the swivel, didn't you?

A. Yes.

Q. You wanted to see whether it was frozen fast, or not?

A. Because there is no cable on it.

Q. Would it make a difference if there was a cable on it? A. Yes, sir.

(Testimony of Walter H. Carlton.)

Q. It would? A. Yes, sir.

Q. And you would be able to tell that difference two feet away, would you? A. Yes, sir.

Q. How do you know it was a $\frac{7}{8}$ wire on the bridle?

A. Well, I have a pretty good judgment of sizes when I look at anything.

Q. What is this size?

A. It is $\frac{3}{4}$, I think, about $\frac{3}{4}$.

Q. It is about $\frac{3}{4}$?

A. No, not about $\frac{3}{4}$, it is $\frac{3}{4}$.

Q. How do you know that?

A. Because my mechanical ability tells me that.

Q. You can tell that it is exactly $\frac{3}{4}$, can you?

A. Well, it [285] may be $\frac{11}{16}$ or it may be $\frac{13}{16}$. I can tell the difference between a half and $\frac{7}{8}$.

Q. You can tell the difference between $\frac{5}{8}$ and $\frac{7}{8}$, can you?

A. When I am close to it. When I was over examining it I looked at it.

Q. Then you made up your mind it was $\frac{3}{4}$?

A. It just happened to pass through my mind that it was $\frac{3}{4}$.

Q. If I told you it was $\frac{5}{8}$ you would say I was wrong, would you?

A. No, I would not say you were wrong; I would not say I was right in saying it was $\frac{3}{4}$.

The COURT.—Well, is that $\frac{5}{8}$?

Mr. HEIDELBERG.—I don't know your

(Testimony of Walter H. Carlton.)

Honor; that is for the witness to say. I am going to find out, however.

Mr. LILLICK.—Then I don't think that examination is hardly fair, your Honor.

The COURT.—Well, I don't think it is of much consequence, anyway.

Mr. LILLICK.—Q. Have you a rule in your pocket? A. No.

Mr. HEIDELBERG.—Q. There are two swivels, Mr. Carlton. A. Yes.

Q. They are of a distinctly different type?

A. Yes.

Q. What was the type of swivel used on the barge that day? A. I can't remember that.

Q. You can't remember the type?

A. There are two or three different kinds of swivels, I can't tell the exact kind.

Q. You see there is a noticeable difference between those two; which swivel was it?

A. I can't tell.

Q. You cannot tell? A. No.

Q. And yet you examined them to know that they worked freely?

A. Well, you might examine a swivel, but that is quite a long [286] while ago and I didn't pay any attention to it.

Q. What did you do about getting the bridle?

A. Nothing at all.

Q. You didn't have any orders from Paladini about getting that bridle, did you? A. No, sir.

(Testimony of Walter H. Carlton.)

Q. And you absolutely took no part whatsoever in getting that bridle? A. No, sir.

Q. Do you know Mr. Del Favero?

A. No, sir.

Q. You never talked to him in your life, did you? A. No, sir.

Q. You never talked to him specifically about getting this cable, did you? A. No, sir.

Q. And Mr. Paladini never gave you any instructions at that time relative to getting this bridle? A. No.

Q. Or about getting the swivel? A. No.

Q. And you were port engineer at that time, yet you don't know where it came from at all?

A. I do not.

Q. Of course, you don't know, Mr. Carlton, what happened to this tow-line after the time you left the employ of Paladini on June 5 or 6, 1923, do you? A. No, sir.

Q. You don't know anything about the "Three Sisters" having made a trip to Santa Cruz or to Monterey, during that time, do you? A. No, sir.

Q. It was not made under your orders or under your direction at all? A. No, sir.

Q. You don't know whether or not the tow-rope was cut during that time, or anything about it?

A. No.

Redirect Examination.

Mr. LILLICK.—Q. Will you take this pair of calipers and a ruler and tell us what the size of

(Testimony of Walter H. Carlton.)

this cable is, referring to the cable about which the witness was interrogated a few moments ago?

A. $\frac{3}{4}$.

Mr. HEIDELBERG.—Q. Mr. Carlton, you don't know, of course, [287] what happened to that cable or what happened to the swivel, and when I say "cable" I mean the cable on the bridle, after the accident, do you? A. No, sir.

Q. You were not in the employment of Paladini at that time? A. No.

Q. You never saw it?

A. No, I never saw it.

Q. And, Mr. Carlsen, you also do not know, of course, that the same swivel, or the same tow-line, or the same bridle was used to tow the "Three Sisters" back that was used to tow it up to Point Reyes? A. No, sir, I do not.

TESTIMONY OF GEORGE REID, FOR CLAIMANTS.

GEORGE REID, called for answering claimants, sworn.

Mr. HEIDELBERG.—Mr. Reid, what is your business? A. Pile-driver man.

Q. How long have you been engaged in that business? A. Since 1907.

Q. In the year 1923, you were engaged in that business? A. Yes, sir.

Q. By whom were you employed in May and June of that year? A. Healy & Tibbitts.

(Testimony of George Reid.)

Q. Working under whom? A. Mr. Carlsen.

Q. Whereabouts? A. Point Reyes.

Q. How did you get up to Point Reyes to work on that job? A. On the "Corona."

Q. Did you have anything to do with the loading of Barge 61?

A. Nothing any more than the rest of them did; Mr. Carlsen has already told you what happened.

Q. When you were up at Point Reyes, how long were you up there?

A. About four weeks, I guess.

Q. Did you remain up there all of that time, or did you come [288] back and forth?

A. Came back and forth over the week-ends.

Q. How would you get back and forth?

A. On Paladini's boats.

Q. When you say "Paladidi's boats," what do you mean, what ones do you mean?

A. On the "Corona" and on the "Three Sisters."

Q. Can you tell how many times you went up to any particular boat? A. No.

Q. What would you say as to the relative number of times you went on the "Corona" as compared to the number of times you went up on the "Three Sisters" and that you came back?

A. None at all.

Q. You would not want to say?

A. Not either way.

Q. Did you go up on the "Three Sisters" at any time? A. Yes, sir.

(Testimony of George Reid.)

Q. And did you come back on the "Three Sisters" at any time? A. Yes, sir.

Q. Did you come back on the "Corona" at any time? A. Yes, sir.

Q. You would not care to say the number of times you went up on each one of them, or any one of them? A. No, sir.

Q. When did the "Three Sisters" arrive up there prior to leaving for the last trip down here, how long before?

A. Well, how do you mean—do you mean when she left here to go up there?

Q. No, how long was it after the "Three Sisters" arrived in Drake's Bay that she left there for the last trip down here? A. With us?

Q. Yes; was it a day or two, or three days, or what was it?

A. About two days, or two and a half days, or something like that.

Q. Do you remember when she arrived up there for the last time? A. No, I do not.

Q. Were you on the dock at the time she arrived there with Mr. Carlsen and the others?

A. We were working there, yes. [289]

Q. You were working there? A. Yes.

Q. Did you at that time hear the captain of the "Three Sisters" say anything to Mr. Carlsen?

A. Well, he said he came up to take us home. That is all I heard.

Q. Did he ask anything about how long it was going to be before you were finished?

(Testimony of George Reid.)

A. Something to that effect. I didn't pay attention to it, I was working there. I heard them talking something like that.

Q. And then did the "Three Sisters" wait up there until you were ready to come back?

A. Yes.

Q. And when you were finished and were starting to come back did you ask the captain for permission to come back on the "Three Sisters"?

A. No.

Q. Did you help store the luggage on board the "Three Sisters"? A. Yes, sir.

Q. And after you had stored this luggage on the "Three Sisters," where did you stay: Did you stay on the "Three Sisters," or did you go on the barge?

A. After we got the stuff all on we got on the "Three Sisters" and went out to the barge, and he ran alongside of the barge and let four of us off.

Q. What did you do while you were on the barge?

A. We hauled in the anchor that was holding the barge, and took it up, and the deck-hand passed us a tow-line.

Q. What did you do with the tow-line, if anything? A. Threw it over a bitt.

Q. And who, if you know, fixed the tow-line over the other bitt?

A. One of the other men, I don't know who they were.

Q. Don't you remember it was Mr. Trueheart?

A. Trueheart was there. He was on the barge

(Testimony of George Reid.)

with us. There were four or five of us on the barge, I couldn't say who did it.

Q. Did you have anything to do with placing the bridle over [290] the bitts when she was going up there? A. No, sir.

Q. But you did on the return journey?

A. Yes, sir.

Q. Did you notice the condition of the bridle at that time?

A. Well, it looked a little rusty; that is all I noticed; I didn't pay much attention to it.

Q. Did you notice any strands?

A. Yes, there were a few around there where it was made fast to the shackle there, or whatever it is. It was a little rusty, and some of them were broken.

Q. You didn't notice the swivel, did you, or, did you?

A. No, I didn't notice the swivel. The swivel was a little too far away from me. Of course, I didn't pay any attention to that, I was working. They just passed the bridle to make it fast and that is all you had to do. I didn't pay much attention to what was going on.

Q. When you boarded this boat, did the captain say anything to you about what part of the boat you were to remain on or to occupy? A. Not a word.

Q. At any time during this voyage from Point Reyes to San Francisco, did the captain say anything to you about occupying a certain portion of the boat? A. Not a word.

(Testimony of George Reid.)

Q. Where were you during the journey to San Francisco, on what part of the boat were you?

A. On the stern end.

Q. Who was with you, if you know?

A. Mr. Carlsen, Mr. Haney, Mr. Sauder were there for a while; the cook had made coffee and every once in a while—there was a small place to go there—and we went one at a time up there, and a few of us stood around, but just who stood around I could not tell.

Q. Were you sitting down in the after part of the vessel at any time? A. Yes, sir.

Q. What were you doing there?

A. Playing cards.

Q. With whom were you playing cards?

A. Mr. Sauder, Mr. Carlsen, [291] the cook and myself.

Q. The cook is Mr. Lewis?

A. I don't know, I never learned his name.

Q. Or, rather, Mr. Woods.

A. I don't know, I never learned his name.

Q. At that time you were back there, did you hear the captain say anything about anybody being beware of the tow-line? A. Not to my knowledge.

Q. Did you hear him say it at any time to anybody in your presence?

A. Only after the accident occurred he said that was no place for anybody to sit, they ought to have better sense than sit on the stern of the boat.

Q. That was the only thing you heard the captain say?

(Testimony of George Reid.)

A. That was the only thing I heard the captain say.

Q. And that was after the accident?

A. And that was after the accident.

Q. Did you notice the distance that separated the barge from the "Three Sisters" at any time during this journey?

A. Well, that is pretty hard for me to say.

Q. Did you notice the distance, did you notice the barge at any time, did you look back toward the barge?

A. Every once in a while, yes, we would give her the once over, when she bounced around.

Q. What would you say was the extreme distance at any time that separated that barge from the "Three Sisters," just give us your best estimate?

A. Well, I don't know; I am a poor estimator. It might be 150 feet, it might be 175 feet for all I know.

Q. But you would say it was not in excess of 175 feet?

Mr. LILLICK.—Oh, Mr. Heidelberg. If your Honor please, we have had leading questions, of course, but I think that [292] question ought to be stricken out and even a different line of inquiry pursued before it is returned to again.

The COURT.—I don't think it is going to do any harm at all, Mr. Lillick, for the reason that the witness has already said it might be 150 or it might be 175 feet. If he had not already expressed an opinion it might be perhaps improper to permit a lead-

(Testimony of George Reid.)

ing question, but inasmuch as he has, I cannot see that it makes much difference; in other words, supposing he says "Yes," it won't add anything to it or take anything from it.

Mr. HEIDELBERG.—Q. You would say that the extreme distance was not to exceed 175 feet, in your opinion?

A. Well, that is pretty hard to say. I don't know what I would say. Some say 175, some say 200, some say 180. I was just giving you my estimate about it. I would not say "Yes," and I would not say "No."

Q. You did see the barge at various times during the journey down?

A. Yes, and I know the tow-line was pretty tight all the time. I should not think it was over 175 feet, the way the tow-line was.

Q. Did you see any tow-line or rope on any other part of this vessel?

A. Right where the mast, where the bight was made fast, there was quite a coil there.

Q. And that was the part of the tow-line that was left—

Mr. LILLICK.—Now, just a minute. I object to that as leading.

Mr. HEIDELBERG.—Q. That was one continuous line, wasn't it? A. Yes.

Mr. LILLICK.—The same objection.

The COURT.—I will sustain the objection to that. [293]

(Testimony of George Reid.)

Mr. LILLICK.—And may the question and answer go out, your Honor?

The COURT.—Yes.

Mr. HEIDELBERG.—Q. Can you tell us whether or not that part of the line that was on the after deck of the vessel was part of the tow-line, itself? Can you tell that?

A. You mean to say that the coil beneath the post was part of the tow-line?

Q. Yes.

A. You mean that which was made fast to the mast?

Q. Yes. A. Yes.

Q. It was? A. Yes, sir.

A. And can you tell us whether or not any of that was ever paid out at any time, added to the tow-line?

A. Not to my knowledge, it was not.

Q. What did you do with Mr. Carlson after this accident?

A. We pulled him over and got him up against the mast where the line was made fast, and got some mattresses off the top of the house there, and piled them around him, Mr. Sauder and him, and got a bed made for him.

Q. Prior to that time did you do anything with Mr. Carlson in relation to this rope? A. No.

Q. You don't remember that? A. No.

Q. There was quite some excitement about that time, wasn't there? A. Yes.

Q. What did you do, did you help Mr. Sauder, or did you help Mr. Carlson first?

(Testimony of George Reid.)

A. I helped both of them, that is, one at a time. The rest were up forward. Me and the cook were back there alone.

Q. The other fellows came running back after that? A. Yes.

Cross-examination.

Mr. LILLICK.—Q. When you saw the strands of the bridle broken, were the strands that you saw that were broken near [294] the loop that went over the bitt?

A. Well, no, just the end of the splice, the end of the splice that went over the bitt.

The COURT.—Q. Do you mean the end of the thimble?

A. No, the end of the splice, your Honor, right here.

Mr. LILLICK.—Q. Were they like these wires that you see here?

A. They were spliced, and some of those strands were broke out here.

Q. I call your attention to these wires here; did it appear to be like those wires, there?

A. No, that is just the end stuck in there; it was not there at all, it was up in here.

Q. Did the rope appear to be weak to you?

A. It appeared to be pretty rusty, as if it had been down in the hold of the boat for some time, and they took it out on that trip.

Q. How do you know that it had been down in the hold of the boat for some time? Did you hear that this morning?

(Testimony of George Reid.)

A. No. That is the way I thought it was.

Q. How did you know that it had been down in the hold of the boat?

A. Because there was rust on it, and heat in the hold of the boat would do that.

Q. What is your business besides pile-driving?

A. None.

Q. How long have you been pile-driving?

A. Since 1907.

Q. How old are you? A. Forty-two.

Q. How long have you known Mr. Carlsen and Mr. Sauder? A. About ten years.

Q. Are you a family man? A. No.

Q. Are your families friends? A. No, sir.

Q. Your family doesn't know their family?

A. No, sir.

Q. Have you ever called at their houses?

A. No, sir.

Q. Did you help Evans haul in the hawser after it was broken? A. No, sir.

Q. Did you notice the hawser at all after it was hauled in on [295] the "Three Sisters"?

A. Just took a glance at it and seen where it was broke.

Q. Where was it broken?

A. About a foot or so from the swivel, there, and about—well, I would not say whether it was two feet, or a dozen feet, or a million feet, or at all, but it was broke somewhere near the eye on the other bitt. I don't know whether it was the starboard side or the port side, but it was one side.

(Testimony of George Reid.)

Q. How long was the bridle on each side after it was broken, giving your measurement from the eye to which it was attached?

A. That is pretty hard to say, too; it might be about six feet and it might be ten feet; I could not tell you, though.

Q. That is one side; on the other side, how far would you say? A. Probably five feet.

Q. How long was the bridle when it was first affixed? A. I don't know.

Q. You don't know how long either side of the bridle was from the main shackle? A. No, sir.

Q. Thirty feet?

A. I would not say, I don't know.

Q. Fifty feet? A. I don't know.

Q. You have no idea? A. I have no idea.

Q. How wide was the front end of the barge on which the bitts were

A. Probably 30 feet, not over 30 feet.

Q. How long was the barge? A. I don't know.

Q. What is your best recollection as to the length of the barge? A. Maybe 60 feet.

Q. Did you notice any other rope on the "Three Sisters" besides the hawser?

A. No, only a short piece on the bow that we tied up to Meiggs' Wharf with.

Q. How long was that piece? A. I don't know.

Q. You saw it on this occasion?

A. I saw it. It was probably [296] 10 feet from the bitt up to the top of the wharf.

(Testimony of George Reid.)

Q. Are you speaking of the total length of the line?

A. No. The total length of the line I don't know.

Q. How long was the line?

A. I don't know; it was wrapped around the bitt.

Q. You didn't see it on the bitt before that time?

A. No.

Q. So you didn't see any other rope on the deck of the "Three Sisters" but this hawser? A. No.

Q. Was the door into the engine-room open while you were on the "Three Sisters"?

A. Do you mean on top of the house?

Q. Yes. A. Yes.

Q. All of the time?

A. Well, I couldn't swear to that, whether it was all of the time, or not, but I know the captain was going in and out of there quite a few times. I don't know.

Q. Was the hatch closed on the after deck, or was it open? A. It was closed.

Q. Do you know why the boys didn't put some of their things in the hold aft?

A. I could not tell you.

Q. In what position were you while you were playing cards? A. Sitting down on the deck.

Q. With reference to which of you with your back to the bow and which of you with your back to the stern?

A. There was only one man that I know of had his back to the stern, and that was Mr. Carlsen.

Q. And in what relation to him were you?

(Testimony of George Reid.)

A. Opposite.

Q. Were you and he playing partners?

A. Yes; me and him were playing partners.

Q. You were playing partners? A. Yes.

Q. What was it you were playing?

A. I think it was whist we were playing.

Q. Do you remember on which side of you Mr. Sauder was? [297]

A. He was sitting on the opposite side of me.

Q. Who was sitting opposite? A. Mr. Sauder.

Q. Opposite of whom?

A. Opposite the cook, and opposite me, to. The cook was sitting here, and Mr. Sauder was sitting here.

Q. Which of them was nearer the line?

A. Both of them were pretty near the line.

Q. By that, do you mean the cook and Carlsen, or the cook and Sauder?

A. Me and Sauder were the closest to the line.

Q. How is it that you were not hit?

A. The blow on Mr. Sauder took it away from me. Mr. Sauder stopped me from getting hit. It picked him right up on his feet and knocked him against the rail—it pretty near knocked him over.

Q. The blow came from the rear instead of from the side. A. Yes.

Q. The line came in?

A. It just whipped like that.

Q. How much of a sway was there to that line before it broke?

(Testimony of George Reid.)

A. Not a great deal; a steady strain, a steady strain, tight; the line was tight.

Q. Wasn't the line between the mast and the after portion of the "Three Sisters" going with the boat—a steady strain on the line and straight, but the boat moving and apparently making the line play back and forth? A. Not over six inches either way.

Q. You mean at the point where you were sitting?

A. At the point where I was sitting.

Q. Did you see the barge roll at all during the tow?

A. Not only when the line broke.

Q. Did you notice any water on the deck of the "Three Sisters"? A. No.

Q. Where were you when Kruger put out the line, lengthened out the tow?

A. I didn't notice Kruger lengthen the tow at all.

Q. Do you know when the line was lengthened?

A. No. [298]

Q. When did you first get on the launch?

A. When Mr. Carlsen hollered that we were ready to go and for him to come over, and so the captain came over.

Q. Was that after you had put the bridle over the bitt?

A. Oh, no, that was when we were all done with the job and everything was all fixed up to go home. All we had to do was to go to Booth's wharf and load up our stuff and come back and hook on the driver and go.

(Testimony of George Reid.)

Q. You got up on the barge, didn't you, to put the
bridle over the bitts?

A. Four men had to be on the barge to take in the
anchors.

Q. And you were one of those men? A. Yes.

Q. When did you get on the "Three Sisters"?

A. When we started out a little ways and got
everything fast on board.

Q. That was before you started away from the
pier at all? A. Oh, no.

Q. Tell me when it was. Was it before you got
out and stopped at the bell buoy?

A. We did not stop at the bell buoy at all.

Q. You didn't stop at the bell buoy?

A. No, sir.

Q. When was it with relation to the actual start-
ing of the voyage with the launch ahead of the barge
and under way that you got on the barge?

A. I have already told you when we got on the
barge. When we got our stuff—I beg your pardon,
I don't mean the barge, I mean the "Three Sisters."
I could not tell you just when it was, or how
long it was; I don't know what time it was, or how
long we were on the barge, or anything like that, but
I know we got on.

Q. And after you started you don't know where
you went on the "Three Sisters" up to the time you
started to play cards, do you?

A. We crawled along the side, the side that was
the clearest, and we went up and got some coffee.

(Testimony of George Reid.)

Q. You went up and got some coffee, too?

A. Yes.

Q. All the boys stood around and had their coffee?

A. No, there was not room for all of them up there; there was not very much space there after you had the stove on there, and a lot more stuff.

Q. You know that two of your men were there at the window talking to Anderson while the tow was being made; you know that, don't you?

A. No, I don't know that.

Q. You don't know that? A. No.

Q. Where do you place the various men who were on the "Three Sisters" belonging to your crew, Carlsen and your crew, where do you place them at the moment that the line broke?

A. Carlsen was sitting on the stern, and I was sitting opposite him. Mr. Sauder was sitting underneath the tow-line, and the cook was sitting across from him.

Q. That accounts for four of you. A. Yes.

Q. Where were the rest? A. I don't know.

Q. Did you see the others at any time after you got on the launch except when you went up to have coffee? A. Yes, I seen them all.

Q. But you don't know where you saw them?

A. No, I didn't pay attention; they were all walking around there, back and forth, with a cup of coffee in their hand, eating, and chewing the fat with each other.

Q. All over the boat? A. Yes.

(Testimony of George Reid.)

Q. And some up on top of the house where the blankets were?

A. No; there was no room up there for anybody.

Q. You don't think there was room to sit up there?

A. No, there was no room to sit up there. They couldn't sit up there very well. If the boat gave a roll they would sheer off.

Q. The boat was wobbly, was it?

A. Well, no, the boat wasn't [300] wobble, that is, it didn't wobble from one side to the other, but a person being up there on the mattress, you couldn't very well stay up there. It was kind of windy there, too.

Q. Do you, by saying that the line was pretty tight, mean that the tow-line was not in the water, at all? A. Not that I noticed.

Q. So that after you left—you don't know that you passed the buoy out there and they lengthened the line, do you? A. No.

Q. You don't know that they towed a part of the way with a line 50 or 60 feet long and then for the balance of the way, up to the time of the accident, with a line very much longer than that, do you? A. No, I don't.

Q. You have no recollection of that, at all?

A. No, sir.

Q. Have you any recollection of having looked back at the barge, before the accident, and while you were playing cards?

(Testimony of George Reid.)

A. Well, I was sitting like this, and every once in a while I would take a glance at the barge.

Q. You paid no attention to how far she was at that time, did you? A. No.

Q. It was just a passing glance you took, just as you would take a glance at a passing sea gull, for instance? A. Yes.

Q. And undoubtedly you did pass some of the gulls, didn't you? A. Yes.

Q. Did you have any occasion to notice how far they were away? A. No, I didn't.

The COURT.—We will suspend now. The further hearing of this case will go over until next Tuesday at ten o'clock.

(An adjournment was here taken until Tuesday, August 12, 1924, at ten o'clock A. M.) [301]

Tuesday, August 12, 1924.

GEORGE REID, cross-examination (resumed).

Mr. LILLICK.—Q. Mr. Reid, when you testified the other day in commenting upon the strands that you said were broken, you said there were a few around there where it was made fast to the shackle, there, or whatever it is. What did you mean by that, what portion of the bridle?

A. Up a little ways from the splice, there.

Q. Do you mean near the swivel?

A. No, up this way, up around in here.

Q. So that it was some distance back of the splice that was nearest the swivel? A. Yes.

The COURT.—But that is not where it broke,

(Testimony of George Reid.)

at all, was it? I think the evidence is that one of the breaks was a very short distance from the thimble, and the other one was back nearer the bitt.

Mr. LILLICK.—That is partly what I had in mind, your Honor, and I am going to try to get this witness' recollection of where the broken strands were in the wire, and then check one with the other.

Q. It is my recollection that you said that you had no remembrance of the line after it was pulled in on the launch? A. No, sir.

Q. So that after the accident you paid no particular attention to where the bridle, itself, broke?

A. No, sir.

Q. You could not tell whether it was next the bitt on the barge, or whether it was next the shackle, could you? A. No, I could not.

Q. Did you help Evans when he pulled that line in? A. No, sir. [302]

Q. Do you know whether the line was wet when it was pulled in? A. Yes.

Q. It was wet? A. Yes.

Q. So you did pay that much attention to it, didn't you?

A. Yes, I just happened to look up when I was helping to get one of the fellows out of the way.

Q. Had you noticed before that as the swells came by they touched the line as it was in the water, between the barge and the launch?

A. No, I did not.

(Testimony of George Reid.)

Q. So you don't know whether the line was wet before, or not? A. No, I do not.

Q. Would you say, then, that with the distance which you believe the barge to be away from the launch, that the hawser, itself, would be wet or would not be wet before the accident?

A. Well, it did not look as if it would be wet.

Q. So that, speaking now from your recollection of the situation and the distance which you remember the barge to have been away, you would say that that hawser, during the towing and up to the time of the accident, had not been wet: Is that your testimony?

A. It is pretty hard to say about that.

Q. What is your best recollection, Mr. Reid?

A. Well, I don't know.

Q. The fact is you don't know whether that hawser was dragging in the water, or whether it was not, do you? A. No, I don't.

Q. In your testimony the other day you were asked this question:

“Q. Did you notice the distance, did you notice the barge at any time, did you look back toward the barge? A. Every once in a while, yes, we would give her the once over when she bounced around.”

By that you meant she was sheering the tow-line, don't you, going from one side to the other?

A. No, just up and down over the [303] ground swells.

Q. Just up and down? A. Yes.

(Testimony of George Reid.)

Q. What is your recollection as to her side motion; wasn't she sheering from one side to the other?

A. Not until the bridle broke.

Q. Have you been on many tows of that character? A. No, sir.

Q. Is this the only one upon which you ever were on? A. Yes.

Q. You know, do you not, that the barge had no rudder? A. Yes.

Q. You are used to working around the water on a pile-driver, aren't you? A. Yes.

Q. That means working here on the bay, on smooth water? A. Yes.

Q. And you have been towed back and forth on smooth water on many occasions, have you not?

A. Yes.

Q. And on barges of a smaller character, without any rudder? A. Not quite as big as that.

Q. On a smaller barge? A. Yes.

Q. But without a rudder? A. Yes.

Q. Even on those smaller barges, when they have no rudder they sheer in smooth water, don't they?

A. Without a bridle they do, yes.

Q. And with a bridle don't they?

A. Not very much.

Q. In your testimony the other day, Mr. Reid, you said that with reference to the distance the barge was away: "Well, that is pretty hard to say, I don't know what I would say, some say 175, some 200, some say 180." Whom did you mean when you said, "Some say 175, some say 200, some say

(Testimony of George Reid.)

180." Were you talking it over with someone before you went on the witness-stand? A. No, sir.

Q. Where did you get that expression, "Some say 175," what did you mean by that?

A. What I meant by it is that that is the [304] expression that some men would give in giving that description, not that I heard anybody say that, or that anybody did say it, except myself. That is only my judgment about it. Of course, I never measured it, and I don't know for sure.

Q. Then your explanation of "Some say 175, some say 200," is that one man would say it was 175 feet, and another man would say it was 200 feet? A. Yes.

Q. And another man might say it was 150, might he not, in the same way? A. Yes.

The COURT.—What significance, Mr. Lillick, has the length of the line in this particular proceeding?

Mr. LILLICK.—My own theory of the case is this, your Honor: That if we provided for the vessel a bridle and a tow-line of sufficient strength, that regardless of what the distance the barge was from the launch it is no concern of ours in the limitation proceeding, because we had furnished proper equipment, and if the captain did not use it properly that has no bearing on our right to limit.

The COURT.—Then why are we spending so much time on it?

Mr. LILLICK.—But that is my theory, your Honor. Opposed to it is the contention of the

other side, that the tow-line was so short that the accident occurred through the manner in which the tow was made up, and it being a tort, and there being no contractual liability, we are under the burden of explaining to the Court every possible theory under which the line might have broken. It may be that I am going too far in support of my own theory. I think that my own theory is correct. That is my understanding of the situation. Mr. Lingenfelter has another reason which he would like to state to your Honor.

The COURT.—Very well. [305]

Mr. LINGENFELTER.—My own explanation of the materiality of that is on the second aspect of the case. We are not only asking to limit our liability, if we be found liable here, but we are asking to be relieved from all responsibility by reason of this particular towage accident. On the first question, that of the right to limit, our privity and knowledge is the issue. On the second, the issue of fault, the case should be viewed as if it were that of an ordinary marine tort. Then the acts of the master and others in charge of the vessel become very pertinent, and it becomes pertinent as to whether or not the master used a sufficient tow-line as to length, and a sufficiently reasonable safe and proper bridle.

The COURT.—Is it not the proper practice to consider that matter in the event of a limitation? Isn't it the proper practice to consider that matter

after the matter has been referred on the question of the claims?

Mr. LINGENFELTER.—The practice, as I understand it, from *Benedit*—and I will say that that is the only authority I have looked into in the matter—is that in theory the two are separate, but in practice the Court hears both. If the Court holds that the petitioner is at fault, then, of course, a reference is made; if, on the other hand, the Court holds that the petitioner is not at fault, the Court enters a decree accordingly, and there is no reference to the Commissioner, because the Commissioner has no loss to ascertain.

Mr. HEIDELBERG.—Our theory of the matter is that if they had a totally insufficient bridle aboard, and had a totally insufficient tow-line aboard, and did not have the length required, then the vessel would be unseaworthy as without the proper equipment. [306]

The COURT.—But that has nothing to do with the question that I asked, the amount that was out. Your own testimony here certainly shows, taking your own testimony from the most favorable point of view, that there was a very large amount of tow-line which was coiled at the foot of the mast, just aft of the house. Your own witnesses have testified to that. So I do not see that that has very much to do with it. I am trying to figure out some way to shorten this, if I can.

Mr. HEIDELBERG.—We claim that even conceding that they had all the tow-line on board which

(Testimony of George Reid.)

they say they had on board, it was yet insufficient in length.

Mr. LINGENFELTER.—The case which Mr. Bell read to the Court in his opening statement—what case was that, Mr. Bell, was it in 291 Federal?

Mr. BELL.—As to the matter of practice?

Mr. LINGENFELTER.—Yes.

Mr. BELL.—I think that was the Hewitt case.

Mr. LINGENFELTER.—Yes, the Hewitt case. That case outlines the ordinary practice in these matters, and I think it sustains me in my position in regard to the double aspect of the case. Isn't that correct, Mr. Bell?

Mr. BELL.—I think that what Mr. Lingenfelter stated is substantially correct.

The COURT.—Well, if you gentlemen agree on it I will decide both matters. You do agree, do you?

Mr. BELL.—I think that Mr. Lingenfelter's statement is in substance what Mr. Benedict says about it. That seems to be the accepted practice.

The COURT.—All right, you may go ahead.

Mr. LILLICK.—Q. You said the other day that Mr. Sauder was [307] sitting underneath the tow-line. Will you explain that a little more fully, Mr. Reid, where the men were sitting with relation to the tow-line while they were playing cards?

A. Yes. Mr. Sauder was sitting back, with his back to the tow-line.

Q. I am reading to you from your testimony of the other day:

(Testimony of George Reid.)

“Q. Where do you place the various men who were on the ‘Three Sisters’ belonging to your crew, Carlsen and your crew, where do you place them at the moment that the line broke?

“A. Carlsen was sitting on the stern, and I was sitting opposite him. Mr. Sauder was sitting underneath the tow-line, and the cook was sitting across from him.”

As I understand that answer, it indicates that Mr. Carlsen was sitting with his back to the stern, on that little grating; you were sitting opposite him; Mr. Sauder was sitting near to the port side and underneath the tow-line, and the cook, or the other man, nearer the rail; is that correct, or isn’t it?

A. Yes, that is it.

Q. That tow-line, then, was swinging either over Sauder’s head or behind his head, but a few inches away, wasn’t it? A. Yes.

Q. You don’t think that was a safe place, do you, for him to be? A. Well, I don’t know—

Mr. HEIDELBERG.—Just a moment. If the answer is in, your Honor, I ask that it be stricken out for the purpose of my objection.

The COURT.—All right.

Mr. HEIDELBERG.—I object to that question as improper.

The COURT.—Well, let it go out, if the answer is in, whatever it is, and I will sustain the objection. What the witness thinks about it is not of very much importance.

Mr. LILLICK.—I really think so, myself, your

(Testimony of George Reid.)

Honor, but that sort of a question follows in a man's mind, usually. It is, [308] I should take it to be, a self-evident fact.

Q. Can you tell me when you first saw Barge 61 during the time this work was going on, whether you saw it at the pier, or whether you first saw it up at Point Reyes?

A. I helped to load some of it down at Pier 46.

Q. So that you saw this bridle down at Pier 46, didn't you? A. No, sir, I didn't.

Q. Was it there?

A. No, sir, it was not there at the time, at all.

Q. What time were you down there at Pier 46?

A. About half past five.

Q. On that morning?

A. No, not that morning. I was not there that morning at all at Pier 46. I left there that evening.

Q. What day was it you were around there at about five o'clock?

A. The day we loaded the barge, whatever day that was.

Q. And it is your testimony that the bridle was not on the barge at that time? A. It was not.

Q. Are you sure of that? A. Yes.

The COURT.—Q. By loading it, you mean loading the piles on her? A. Yes.

Mr. LILLICK.—Q. How many piles did she have on her on the way up?

A. I couldn't tell you that. The piles were on her before we went down there.

(Testimony of George Reid.)

Q. She was much heavier on her up trip than she was on the down trip, wasn't she? A. Yes.

Q. All the piles were off?

A. You mean coming back?

Q. Yes.

A. I think she had some on her coming down, but I don't know how many.

Q. Have you no recollection about that?

A. No, sir.

Q. You don't know how many were piled across the deck, or in the way or not in the way?

A. No, sir. [309]

Q. Did she have any water for her donkey-engine?

A. I couldn't tell you that, I didn't pay that much attention.

Q. She had a donkey-engine on her, didn't she?

A. Yes.

Mr. LILLICK.—That is all.

Redirect Examination.

Mr. HEIDELBERG.—Q. How wide is the "Three Sisters" at the stern? A. I don't know.

Q. If you were told that the "Three Sisters" was 18 feet wide in the back, and the tow-line was stretched from the mast over the center of the stern of the boat, how far would you say that Mr. Sauder was sitting from the tow-line?

The COURT.—It is perfectly evident that he could not have been sitting the same distance from the tow-line at all times, because, of course, in the course they were going, and the direction in which

(Testimony of George Reid.)

the ground swells were coming, that tow-line would swing, and it would not be the same at all times. I don't think anybody could answer that question.

Mr. HEIDELBERG.—I will withdraw that question.

Q. When you were playing cards, what was the closest that Mr. Sauder was ever sitting to the tow-line, if you know?

A. I don't know, I could not explain that at all.

Q. Did the captain come back to the stern of the boat at any time while you were there?

A. Not that I noted.

Q. Do you remember any incident there in relation to any fish?

A. They had some fish aboard, I know, and the captain and Mr. Carlsen were talking about some fish, but I don't know what they done.

Q. Did you see the captain do anything about the fish?

A. No, I could not say that I did. [310]

Mr. LINGENFELTER.—May we put a witness on out of order?

Mr. HEIDELBERG.—Yes.

Mr. LILLICK.—If your Honor please, we were asked the other day for the license of the vessel. We have it here. We offer a certified copy in evidence. It gives the definite dimensions of the barge.

(The document was here marked Petitioner's Exhibit 3.)

TESTIMONY OF ERNEST MOHR, FOR PETITIONER.

ERNEST MOHR, called for the petitioner (out of order), sworn.

Mr. LINGENFELTER.—Q. What is your name?

A. Ernest Mohr.

Q. Where do you reside?

A. 719 Faxon Avenue.

Q. How old are you? A. 34.

Q. What is your occupation?

A. Master and pilot of steam vessels.

Q. What licenses do you hold, if any?

A. Master and pilot, San Francisco Bay and tributaries, to sea and return.

Q. What waters do those licenses entitle you to ply upon?

A. San Francisco Bay and tributaries, to sea, anywheres, unlimited distance in the meaning of towing to sea.

Q. What has been your towing experience? Just explain it in your own words.

A. I have towed ships from San Francisco Bay to the Farallone Islands, Point Reyes, Montara, Point Sur, and to Monterey.

Q. For how many years have you been engaged in towing? A. 15 years.

Q. What is your principal work upon the high seas now at the present time? A. Towing vessels.

Q. Have you had any experience in towing barges? A. Yes, sir.

(Testimony of Ernest Mohr.)

Q. Are you acquainted with Crowley's Barge 61?

A. Yes, sir.

Q. Do you know that barge?

A. Yes, sir. [311]

Q. Have you ever towed her? A. Yes, sir.

Q. Are you familiar with the "Three Sisters," the vessel mentioned in this proceeding?

A. I have seen her, yes.

Q. Have you ever towed barges of the dimensions of Crowley's Barge 61? A. Yes, sir.

Q. Have you towed Crowley's Barge 61?

A. Yes, sir.

Q. Have you ever towed vessels of the character of the "Three Sisters"? A. Yes, sir.

Q. In the particular waters between Drake's Bay and San Francisco, have you towed over that particular course? A. Yes, sir.

Q. How many times?

A. Anywheres from ten to sixty times.

Q. Have you ever towed Crowley's 61 over that particular course? A. No, sir.

Q. Have you towed any barges of the character of Crowley's 61 over that particular course?

A. Yes.

Q. How many times, would you say?

A. About half a dozen times, on different occasions.

Q. Were any of those half dozen voyages made with a tug of the character of the "Three Sisters"?

A. Something similar to her.

Q. With greater or lesser horse-power than the

(Testimony of Ernest Mohr.)

“Three Sisters”? For that purpose I will state to you that the horse-power of the “Three Sisters” has been fixed by the evidence in this case at 135.

A. The horse-power of the boats I have been on in that location is 110 horse-power, a 65-foot launch.

Q. Captain, before you here you will see a bridle. On the half dozen voyages you have mentioned as having made from Drake’s Bay to San Francisco, did you use a bridle of that general character on any of those voyages?

A. Very similar to the same.

Q. What are the dimensions of the cable used in the legs of [312] the bridle you used on those voyages?

A. I believe it was a $\frac{5}{8}$ or a $\frac{7}{8}$ wire, I don’t quite remember.

Q. Did the bridle that you used on those voyages have swivels? A. Yes, sir.

Q. I will ask you to step down here a moment, if you will, and examine this swivel which is upon the bridle which is before you, and the swivel which is upon the physical object marked Exhibit “A”; have you observed those? A. Yes.

Q. Which type of swivel did the bridles which you used on those six voyages have?

A. Similar to these.

Q. Well, which one? Those two are different, Captain, if you will observe. Which type was used by you? A. We used both types.

Q. Have you used, in towing barges on any other voyages than the six you have mentioned as having

(Testimony of Ernest Mohr.)

made from Drake's Bay to San Francisco, have you used bridles? A. Yes, sir.

Q. When and where? Go ahead and tell us your experience in towing barges with bridles of the character of the one before you, here?

A. I towed a Government barge with a radio supply to Farallone Islands, with the steam tug "Crowley No. 3."

Q. Did you use a bridle on that occasion?

A. A bridle, yes.

The COURT.—Q. Are you with the Crowley Company now?

A. I am with the Shipowners & Merchants Tugboat Company, but I have been with the Crowley Company.

Mr. LINGENFELTER.—Q. Have you any connection with the Red Stack Tugboat Company at the present time? A. Yes.

Q. What connection?

A. I am employed as master and pilot.

Q. The principal business of that company is towing on the high seas, isn't it?

A. It is towing, yes.

Q. Captain, I am about to address a hypothetical question to [313] you, and I will ask you to assume the following facts:

Assume that a tug in tow were proceeding from the bell buoy outside of Drake's Bay to the port of San Francisco, upon a due course from the bell buoy to Drake's Bay, to the buoy off Duxbury Reef, that course being east by south, by half south;

(Testimony of Ernest Mohr.)

assume that the tug was the "Three Sisters," she being a vessel of 135 horse-power, of the dimensions shown by her certificate of registration, 56 feet long by 15.6 feet beam, and manned by a master and one deck-hand; that the tow was a square-deck barge, Crowley's barge No. 61, having no rudder, and having a deck cargo composed of a pile-driver and a donkey-engine and some spars; that there was employed in making this tow a 7-inch manila hawser of from 400 to 500 feet in length; this hawser was made fast to the mast of the "Three Sisters"; it was connected with the barge by being tied into a thimble connected with the swivel of a bridle on the barge; the bridle was a $\frac{7}{8}$ -inch or a $\frac{3}{4}$ -inch steel cable, the legs being approximately 35 feet each, making a total length of approximately 70 feet; the ends were looped, and the loops were placed over the towing bits of the barge. The time was on the afternoon of June 8, 1923. The weather was fair; the wind was light northwesterly; the sea was smooth except for westerly ground swells of the kind usually encountered in those waters at that time of the year. Captain, would you consider the use of the tow-line and the bridle safe and proper in making that tow under the circumstances I have mentioned in the hypothetical statement to you?

A. Yes.

Q. What, in your opinion, would be the shortest seven-inch manila hawser which it would be safe and proper to use in making that tow, with the bridle I have described and the barge [314] I

(Testimony of Ernest Mohr.)

have described, and the ship I have described, and assuming the other facts stated in the hypothetical question?

A. I would not have it less than 350 or 400 feet.

Q. Would a vessel upon the course that I have mentioned in the hypothetical question be taking the sea by the bow?

A. No, sir. You mean running before the wind, don't you?

Q. Yes. A. No, it would not.

Q. Has it been your experience in towing, Captain, that there are inevitable accidents for which you cannot account?

Mr. HEIDELBERG.—That is objected to as being immaterial, irrelevant and incompetent.

The COURT.—Yes, I cannot see how that is material. Unless you have something to urge on that, Mr. Lengenfelder, I cannot see how it is proper.

Mr. LINGENFELTER.—Q. Captain, under what circumstances does reasonably proper and safe towing equipment break?

Mr. HEIDELBERG.—That is objected to also.

Mr. LINGENFELTER.—Your Honor, I am trying to get at the possible causes of breakage. One of the cases that Mr Bell urged holds that in a situation such as we have presented to us, here, that the petitioner must account for certain possible causes of breakage. It is my purpose to develop by this witness the usual accountable causes for breakage under tow.

The COURT.—I will allow the question.

(Testimony of Ernest Mohr.)

A. By cross seas, or by a tow, or a launch, or a tug being in different positions, such as the barge being up in one sea and the tug being down in the other.

Mr. LINGENFELTER.—Q. Is it or is it not the fact that the best and safest possible equipment breaks under such circumstances as you have mentioned? [315]

Mr. HEIDELBERG.—That is objected to as being immaterial, irrelevant and incompetent.

The COURT.—Well, I will allow it. It seems to me, though, it is a matter of pure common sense. The object of an expert in admiralty is to inform the Court as to matters of the sea, but the Court has sense enough to see that there will be an additional strain if the tow is going down one side of the swell and the tug is coming up on the other side. It doesn't take a great deal of sense to know that.

Mr. LINGENFELTER.—Out of deference to your Honor's views I will withdraw the question.

Q. Captain, in towing, do you ever permit anyone to remain at the stern of the tug? A. No, sir.

Q. Do you regard the stern of the tug under tow as being a safe and proper place for a man to be, with a view to his personal safety?

Mr. HEIDELBERG.—Objected to as immaterial, irrelevant and incompetent.

The COURT.—Let him answer.

A. No, sir.

Mr. LINGENFELTER.—Q. Do you know whether or not swivels of the description I have

(Testimony of Ernest Mohr.)

mentioned in the hypothetical question are used in towing rudderless barges by the Red Stack Tugboat Company? A. Yes.

Q. And what percentage of the towing out of this port would you say the Red Stack Company does? A. 95 per cent.

Cross-examination.

Mr. HEIDELBERG.—Q. Captain, by whom are you employed at the present time?

A. The Shipowners & Merchants Tugboat Co.

Q. Who is the president of that concern?

A. Thomas Crowley. [316]

Q. Is he the same Crowley who is the president of the Crowley Launch & Tugboat Company?

A. Yes, sir.

Q. And he was your former employer while you were working for the Crowley Launch & Tugboat Company? A. Yes.

Q. Do you give any preference to the kind of swivels you use, distinguishing between a swivel which has a play at both ends, similar to Claimant's Exhibit "A," and one which only has a play at one end?

A. Either swivel may be used, either swivel is competent to perform the service which you use a swivel for.

Q. Before you make a tow, as captain, you always examine your swivel, don't you, to see whether or not it is in working order? A. Yes.

Q. You would not use a swivel which was frozen or rusted up fast, would you?

(Testimony of Ernest Mohr.)

A. A swivel that is frozen or rusted up, I always try to put it back in function.

Q. If a swivel is in that condition, it would lay up turns on the bridle wire, wouldn't it?

A. Not necessarily.

Q. If the swivel did not turn, Captain, it would cause the legs of the bridle to wrap around each other, wouldn't it? A. To a certain extent, yes.

Q. And that would cause chafing of the wires, wouldn't it? A. Not necessarily.

Q. If the swivel was not working, and if turns came in the rope, would it not cause those turns to go into the bridle?

A. If the swivel was not working, if there are turns in the rope, the tow-line, yes.

Q. It would cause them to go into the bridle?

A. It would cause them to go into the bridle, yes.

Q. And that would cause the bridle legs, as they are called, to wrap around each other, wouldn't it?

A. Yes. [317]

Q. And that would cause chafing, wouldn't it?

A. I don't think it would cause any chafing, because it is laying tight, and it is laying like a piece of rope.

Q. Those turns would come out, wouldn't they, on a pull? A. On a pull, yes.

Q. And this laying up and unlaying of the bridle legs on each other, and chafing, would have a tendency to make that bridle break, wouldn't it?

A. I never had any experience to that effect.

(Testimony of Ernest Mohr.)

The only swivel we ever used always performed its duty, that is, in that respect, it turned.

Q. As an expert, though, Captain, you know that the very function of the swivel is to keep the bridle legs separate from each other, and also to take the turns out of the hemp rope; that is true, isn't it?

A. Yes.

Q. And you would do that because of the fact that if they lay up on each other, and unlay, it would have a tendency to make them wear out?

A. It has a tendency to shorten up your bridle. That is the only reason I know of why we always use a swivel.

Q. Would not the chafing of the wire, one on the other of the different legs, wouldn't it have a tendency to cause that bridle to break quicker than if the legs were pulling separate from each other?

A. I really don't know. The twisting of the wire bridle, with a certain strain on it, would prevent it from chafing.

Q. If these bridle legs twisted around each other, and then twisted back, it would have a tendency to chafe and to wear out, wouldn't it?

A. Yes, if the bridle kept on turning in and out it would, yes.

Q. Is it your policy and your experience that you tie the bight of a tow-line to a mast or bitts?

A. Yes. [318]

Q. Do you not let all the tow-line you have out? Say, for instance, if you had only 400 feet of rope

(Testimony of Ernest Mohr.)

on board, or 425 feet, or 450 feet of rope on board, you would let out all that rope, wouldn't you?

A. I would not; no.

Q. Is it not a fact that a longer rope, with long ground swells, is a safer towing apparatus than a short tow-rope?

A. It all depends on the size of your tow.

Q. Say you had barge 61, loaded with a pile-driving outfit, would you not consider that the longer tow-rope you had, up to 125 fathoms, would be better than a tow-rope of 350 feet, for instance?

A. Well, that is a matter of opinion.

Q. It would depend greatly, would it not, Captain, on the length of the ground swells?

A. Yes, absolutely.

Q. Of course, you don't know anything about the length of these ground swells on this occasion, do you, other than that they were long ground swells?

A. Of course, I was not there, and I could not say how long the ground swells were. The average ground swell is long enough and short enough to permit an average tow-line of 300 or 400 feet.

Q. It is a fact, Captain, is it not, that you try to keep a tow-line long enough so that the bight of the tow-line will always be in the water? A. Yes.

Q. You don't advocate towing at any time with so short a rope that the bight will be out of the water, especially where you are towing with long ground swells; you don't advocate towing with such a short rope that the bight of that tow-rope will be out of water, do you?

(Testimony of Ernest Mohr.)

A. The bight of the tow-rope between a tow and a launch, it does not take much to keep it in the water.

Q. No, it doesn't take much to keep it in the water, but you would say that the safer thing to do would be to have a tow-line [319] of sufficient length so that the bight of that tow-line will always be in the water; that is true, isn't it?

A. I would not say always. In my experience in towing big ships, we have 125 fathoms of tow-line, with 30 fathoms of wire on the end, and we draw the bight of that out of the water.

Q. But that is towing a vessel that has a sharp prow, isn't it? A. Yes.

Q. And that vessel stands high out of the water at the bow, doesn't it?

A. An empty ship is high out of the water, yes.

Q. Much higher than a barge? A. Yes.

Q. And that, of course, would have a tendency to raise the bight of the tow-line? A. Yes.

Q. The sharpness of the prow of the vessel would have a tendency to cut the resistance of the water against that tow?

A. Well, I don't know. For instance, towing a sailing ship, and she draws 25 feet of water, I don't think the resistance would be less than towing a barge that only draws two or three feet of water.

Q. But would not the width of the bow have a great deal to do with the resistance of the water?

A. Not to any extent.

Q. Not to any extent? A. No.

(Testimony of Ernest Mohr.)

Q. And you mean to say that the prow of a vessel is not made for the purpose of cutting the water and of lessening the resistance?

A. Yes, it is made to cut the resistance.

Q. And a barge is made square across the front end, isn't it? A. Yes.

Q. When you were told that this bridle was 35 feet, making a distance of 70 feet, that, of course, meant the spread of that bridle, didn't it?

A. The spread of the bridle, yes; each part of the bridle was about 30 or 35 feet. [320]

Q. And, of course, you presumed, in answering the question that was put to you, that the bridle and the swivel were in perfect condition?

A. Yes, sir.

Q. As a matter of fact, you had gone over this question before with Mr. Lingenfelter, and you answered it for him before you came into this court, didn't you? A. No.

Q. Do you mean to say you didn't talk with Mr. Lingenfelter about your testimony before you came into this court, to-day?

A. Mr. Lingenfelter asked me what I thought about a swivel.

Q. Is that all he asked you?

A. And what I thought about the bridle.

The COURT.—I don't care whether he talked to him, or not. Any lawyer that does not talk to his witness before putting him on the stand is not doing his duty.

(Testimony of Ernest Mohr.)

Mr. HEIDELBERG.—I agree with your Honor thoroughly on that. I would not think of putting a witness on the stand that I had not talked to before. But on a hypothetical question, the situation is somewhat different.

Q. If you knew that this bridle broke, and not the hawser, and that the tow-rope, or the hawser, flew back, or doubled back over the stern of the boat, how long would you say that that rope could have been and still have doubled back over the stern of the boat?

The COURT.—I don't know what you mean by that question.

Mr. HEIDELBERG.—Q. Calling your attention to the fact that it was not the hawser that broke, but that the bridle broke in two different places, leaving the swivel and part of the bridle still on the tow-rope; if you were told that notwithstanding the fact that this apparatus broke at that particular place, that the tow-rope doubled back over the stern of the boat and struck two men there, how long would you say that this hawser could [321] have been and still have doubled back like that?

Mr. LINGENFELTER.—I desire to object to that question on the ground that the hypothesis assumed does not appear in the evidence. There is nothing in the evidence about this line whipping back across the deck.

The COURT.—I think there is, but I don't know what counsel means by doubling back.

Mr. HEIDELBERG.—I mean that the hawser

doubled back over the back of the boat, that it snapped back.

The COURT.—You don't mean that the end of it which was attached to the bridle snapped back?

Mr. HEIDELBERG.—I am putting it in the alternative, your Honor, because nobody knows that.

The COURT.—Of course, that is manifestly impossible. Even if it were 100 feet long it would be manifestly impossible.

Mr. HEIDELBERG.—That is exactly what I am getting at, your Honor. I want to find out from this witness—

The COURT.—There is no evidence whatever that the bridle end of the hawser snapped clear back to the deck of the "Three Sisters," and it is perfectly evident that no such thing could possibly have happened. It might have if it were 50 feet, but certainly not at 100 feet.

Mr. HEIDELBERG.—That is exactly what I am getting at, your Honor, and I will be very frank in saying that we don't know what part of the apparatus struck these men. We do not know, and it appears in evidence, that they were struck by the rope—we presume by the rope, because if they had been struck by the swivel or by the bridle they certainly would have been killed outright. That is the only reason why they were not struck by that. [322]

The COURT.—Then, isn't it perfectly clear that it did not snap back and strike them with that part of the rope?

Mr. HEIDELBERG.—It is perfectly clear in my mind that it did not snap back.

The COURT.—It is perfectly clear to my mind that when the rope broke it was that part of the rope that was on the “Three Sisters” that struck these men.

Mr. HEIDELBERG.—That would be impossible.

The COURT.—Why?

Mr. HEIDELBERG.—Our testimony will show, if it has not shown already, that the rope did whip across in a doubled-up form.

The COURT.—Of course it whipped across, but your question assumes that it was the end of the rope which whipped across.

Mr. HEIDELBERG.—The end of the rope was made fast to the mast at all times.

The COURT.—I don't mean that end, I mean the other end. Perhaps I do not understand your question correctly, but if I do it assumes that the remains of the bridle, which would consist of the steel swivel and some couple of yards of rope on one side and 20 or 25 feet on the other swung back on to the deck of the boat; is that what you mean?

Mr. HEIDELBERG.—Or that the rope doubled back in between that and swung back.

The COURT.—I have no doubt of that. Some part of it struck these men. It could not have been anything except that part of the rope which was either between the mast and the stern rail, or immediately contiguous to it; it could not have been very much further than that from it.

(Testimony of Ernest Mohr.)

Mr. HEIDELBERG.—That is exactly what we are contending, your Honor, and our experts will show that if that captain had [323] out any length of rope at all, it would not have happened.

Mr. LILLICK.—We will be perfectly satisfied, your Honor, to have the testimony of such experts go in the record uncontradicted, because it would be a physical impossibility for anything else to have happened.

The COURT.—I think so. However, you have your theory of it, and I don't want to shut you off on your theory. Will you read the question, Mr. Reporter. (Question read by the reporter.) I cannot see that the question is intelligible, because if you mean by double back, or snap back—or, rather, do you mean by doubled back or snapped back that the end of the rope which was attached to the barge doubled back so that that came on board the "Three Sisters": Is that what you mean?

Mr. HEIDELBERG.—Will your Honor let me proceed with the captain for just a minute or two, and perhaps I can clear it up?

The COURT.—Yes, perhaps so.

Mr. HEIDELBERG.—And I will go back to that in a minute.

Q. Captain, you have been on tows where the hawser broke, haven't you? A. Yes.

Q. And that hawser snapped back some little distance, didn't it?

A. Yes, it recoiled—if that is what you mean.

Q. Yes, it recoiled.

(Testimony of Ernest Mohr.)

A. Not the end that was on the tow, but the part that is made fast to the tow bitt or mast, that part between the tow bitt and the stern of the boat recoiled back two or three feet, perhaps. I have seen that, if that is what you mean.

Q. And the longer your rope, and the more that the bight was in the water, the less the recoil would be of that rope?

A. I think the more the recoil would be.

Q. If the bight of the rope was in the water?

A. Because I [324] have never seen—

Q. Answer the question “Yes” or “No.” Do you still say the recoil of the rope would be greater if the bight of the rope was in the water than it would be if it were clear up above the waves?

Mr. LILLICK.—Just a moment. The witness, in a perfectly frank way, was proceeding to explain his answer when counsel interrupted him. I think that the witness should be permitted to proceed.

The COURT.—But Mr. Heidelberg’s objection was that he should answer the question first. Just answer that question “Yes” or “No,” and then you may explain in any way you desire.

A. Yes.

Mr. HEIDELBERG.—Q. You understand, of course, that that question supposes that the bight of the hawser is in the water at the time of the break; I still ask you if, under those conditions, the recoil would be greater than it would be if at the time of the break the rope was entirely clear of the water?

(Testimony of Ernest Mohr.)

A. Well, I don't know. I have not seen it. The only time I have seen one of my hawsers break, as a rule, as much as I noticed of it, it was out of the water. There is such a strain on it that it straightens the full length of the hawser out straight.

Q. The fact is that there is a greater strain on a rope when it is outside of the water than when the bight is in the water?

The COURT.—Do you think it is necessary to instruct me on the ordinary laws of physics and mechanics? The function of an expert in admiralty cases is to instruct the Court. I think you can certainly rely on the Court for knowing the ordinary laws of physics. As a matter of fact, the extent to [325] which the rope will snap back will depend upon the strain on it, it would not make any difference whether it was in the water or out of the water.

Mr. HEIDELBERG.—I was just going to say that I was a little at sea myself on this. I have a threefold aspect in asking this, may it please your Honor. In the first place, it is to test how much of an expert the witness is; and then to show that the rope broke while it was outside of the water. If it was outside of the water there was a greater strain on it than there would have been if the boat had been in the water, and there would have been a greater strain on a short line than on a long line.

The COURT.—That is a different question. You may proceed.

Mr. HEIDELBERG.—Q. Is it not a fact, Cap-

(Testimony of Ernest Mohr.)

tain, that when you tow, you endeavor to have that length of line out which will keep as much strain off the rope as possible? A. Yes.

Q. And it is true that the longer the rope the greater stretching power that rope has?

A. Yes. It all depends on the size of your tug-boat and the size of your tow. That has to be considered in it.

Q. Take this situation: Barge 61, towed with a 7-inch manila hawser by the "Three Sisters"; it is still the fact that if he had 600 feet of rope out there would have been less strain than there would have been if he had 150 feet of rope out: Isn't that true?

A. Yes, that is true.

Q. And the same thing goes for 350 feet of rope?

A. I think 350 feet of rope or 400 feet, in my opinion, is sufficient for a 130 horse-power boat and a light barge.

Q. But the question still remains unanswered, Captain, and [326] that is that 600 feet of rope under exactly the same conditions would have had a greater pulling power than 400 feet of rope?

A. I really don't know whether it would have had any more pulling power, because the launch is only able to tow so much, whether she has 1,000 feet of line out or whether she has 100 feet, or 50 feet.

Q. I don't mean pulling power, I mean pulling power of the rope, I don't mean the pulling power of the boat.

Mr. LINGENFELTER.—Do you mean tensile strength?

(Testimony of Ernest Mohr.)

Mr. HEIDELBERG.—Well, I suppose tensile strength might be it, but that would only apply to some little distance of rope.

Q. I mean the pulling power of the rope would be greater, the towing strength of the rope would be greater if there were 600 feet of rope out instead of only 400 feet of rope out.

A. That all depends under what conditions the tow is made.

Q. Under these conditions you have been told about.

A. Under those conditions I think it is sufficient to have that length of hawser between the barge and the launch.

Q. The fact remains that if he had 600 feet of rope out, he would have had a stronger rope out for that pull than if he had only 400 feet; there would have been less likelihood of its breaking: Isn't that true?

The COURT.—You have two questions there. Does your question mean there would be less likelihood of breaking, or that the rope would be stronger? You are asking him both ways. The distinction is very obvious. The length of rope has nothing to do with tensile strength, whatever. The safety of the tow has a good deal to do with it.

Mr. HEIDELBERG.—I withdraw the question, and will reframe it.

Q. There would have been less strain on the rope under these [327] conditions if he had had 600

(Testimony of Ernest Mohr.)

feet of rope out than if he had 400 feet of rope out:
Is not that true?

A. There would have been less strain, you mean, according to the swell, according to the ground swell?

Q. Yes.

A. That I don't know, because I didn't see the ground swell, and you couldn't tell me how much of a ground swell there is, or how high, or how low; I could not very well say anything if I didn't see it.

The COURT.—Q. Is that a matter of judgment in the towing, as to the required length of the line, judging of the instant swells?

A. I think so. If I start out with a tow and I have, say, 600 or 700 feet of line, if I was towing to Point Reyes and I seen that the weather conditions were such that I could use the full length, or if it was nice weather that I could only put out perhaps 200 or 300 feet, it would be that much better towing for me.

Mr. HEIDELBERG.—Q. Do you mean you would graduate your line according to the swells you were encountering? A. Yes.

Q. And as those swells increased in length, you would then increase your line?

A. Yes, as much as I would.

Q. Towing in perfectly smooth sea, you could tow with a less length of line out than you could if the swells were long ground swells? A. Yes.

Q. That is what you mean. You also, when you

(Testimony of Ernest Mohr.)

are towing, if any men were sitting at the stern of the boat, as your passengers, you would order them to leave, would you not? A. Yes.

Q. And you are the master of the ship when you are the captain, aren't you? A. Yes.

Q. And you would compel those men to leave, would you not?

A. It is your duty to warn the men. [328]

Q. And you would take the precaution of knowing that they heard your warning, wouldn't you?

A. I would ask them; it is customary to have the men repeat an order you give them. As a rule it is customary to have the men repeat what you tell them.

Q. I am speaking only of passengers. I don't want to confuse you. If you had some passengers who were on the stern of the boat, and you were towing a vessel, you would tell those men in such a way that you would know that they understood you to get away from there, would you not? A. Yes.

Mr. LINGENFELTER.—Just a moment, Mr. Heidelberg; what do you mean by passengers?

Mr. HEIDELBERG.—Not members of the crew, not your employees, or the employees of the master in any way.

Q. If you had such a passenger on board who was not a member of your crew, and was not working on the ship in any way, you would tell him to get away from the stern of the boat, wouldn't you?

A. Yes, I would tell them, no matter whether they were a part of the crew, or not.

(Testimony of Ernest Mohr.)

Q. It is a fact, is it not, that in towing they use towing machines almost exclusively now?

A. On steamers they use towing machines, yes.

Q. And that is for the purpose of taking up the slack in the line, isn't it?

A. Yes. There are two ways of looking at that. The first point of it is that a towing machine is naturally cheaper, in the long run, than would be a straight manila hawser.

Q. And when you have not got a towing machine on board, you know, as a captain, that it is necessary, sometimes, with long ground swells, to slow up your engine and then to start it ahead again and keep the tow and the weight equal distances apart, do you not, as much as possible, and in order [329] to do that it is necessary to manipulate the engine, is it not?

A. To some extent it is, yes; if there is a heavy swell and you take too much of a line on your tow, you slow down, as a rule.

Q. And you keep a constant watch on your tow, do you not? A. Yes.

Q. And you graduate the speed of your engine to suit the towing condition?

A. Whatever conditions you are under, yes.

Q. That is what I am getting at. You do keep a constant eye on your tow? A. Yes.

Q. And you change the speed of your engine according to the way the tow is being made?

A. And the condition you are under, yes.

The COURT.—Q. What is a towing machine?

(Testimony of Ernest Mohr.)

A. A towing machine is an automatic gear; it can be set for a heavy sea; when there is an extra heavy strain on the hawser it pays out, and then the strain is over it takes that back again.

Q. You have a capstan with a collar on it: Is that the arrangement?

A. Yes, it is a big drum with an automatic gear.

Mr. LILLICK.—Q. And that is only used on heavy tows, isn't it?

A. It is used on the steam tugs. And, of course, steam is required to operate the towing machine.

Q. You never heard of a barge being towed with a towing machine, have you?

A. Yes, I have towed barges with a towing machine.

Q. Inside? A. Inside, and also outside.

The COURT.—Q. Do they have towing machines on tugs?

A. On steam tugs, yes; we have none on our launches.

Mr. HEIDELBERG.—No further questions.

Redirect Examination.

Mr. LINGENFELTER.—Q. Captain, in your experience, have you seen many swivels of the type of Exhibit "A"? A. Yes. [330]

Q. I call your attention to the construction of this swivel. There appears to be a rivet with two bearing surfaces; it would be necessary for both of those to freeze before the swivel would cease to function, would it not, both bearing surfaces?

(Testimony of Ernest Mohr.)

A. Not necessarily. If part of this swivel would freeze the other part would still be free.

Q. And the swivel would still turn? A. Yes.

Q. So it would be necessary for both of them to freeze before it would incapacitate the swivel, would it not? A. Yes.

Q. Did you ever see both of them frozen in your life?

Mr. HEIDELBERG.—I object to that as immaterial. The question here is what was the condition of this swivel.

The COURT.—I will sustain the objection to that.

Mr. LILLICK.—Q. Is there any difference in the length of the tow-line required by a tug of heavy horsepower and one of a lighter horsepower?

A. Yes.

Q. Will you explain that?

A. You take the average length of the Crowley launch tow-lines, they run lines out 250 feet, or 300, or 350 feet, whereas on a steam tug it is required to have the full length of hawser out, the full length meaning 125 fathoms.

Q. In your answer to the hypothetical question, did you take into account that the horsepower of the "Three Sisters" was 135? A. Yes.

The COURT.—Q. Why is that, Captain?

A. Tugboats, referring to steam tugs, are towing, nine times out of ten, heavy ships.

Q. Then it is by reason of the weight of the tow?

A. Yes, the weight of the tow.

(Testimony of Ernest Mohr.)

Mr. HEIDELBERG.—Q. When you said that the average length [331] of line used by Crowley was 250 feet, you had in mind, of course, that Crowley's towing is inside towing, didn't you?

A. What I mean by that is, the line I used, myself, while working for Mr. Crowley in launch towing around the bay, and in whatever outside towing we had to do—the outside towing was not very much.

Q. When you worked for Crowley, did Willie Figari work for Crowley at that time? A. Yes.

Q. And if I told you that Willie Figari testified that they did very little outside towing, you would say that that is correct, wouldn't you? A. Yes.

The COURT.—That is just what he says now.

Mr. HEIDELBERG.—Q. As a matter of fact, do you remember ever towing any distance outside the heads for Mr. Crowley? A. Yes.

Q. How many times?

A. I don't exactly remember the number, but probably half a dozen times, speaking offhand.

Q. That would be just outside the heads, to unload rubbish barges? A. Yes.

Q. As a matter of fact, you don't know of one time that Crowley ever towed a barge as far as Point Reyes, do you?

A. We took a boiler off the beach at Bolinas.

Q. And that is the only time when the barge went up with a boiler, or got a boiler, that you remember Crowley going any distance outside the heads?

A. We towed rock barges for Duncanson and

(Testimony of Ernest Mohr.)

Harrison around Bolinas when they were building the electric towers for the Great Western Power Company.

Mr. LINGENFELTER.—Q. In towing those rock barges, Captain, did you use a bridle of the character that I have described in the hypothetical question?

A. Yes, something similar to that. [332]

Mr. HEIDELBERG.—Q. You say a bridle; you always use a bridle when you are towing a barge, do you not?

A. Not always. When the launches were equipped with bridles, we did, yes, but in the tug-boats they do not as a rule carry any bridles with them when you tow barges for any distance, or for any length of time.

TESTIMONY OF FRED WOODS, FOR CLAIMANTS.

FRED WOODS, called for the answering claimants, sworn.

Mr. HEIDELBERG.—If your Honor please, I intend to make this examination just as short as I can.

Q. Mr. Woods, you were the cook working for Healy-Tibbitts under Mr. Carlsen's direction while the wharf was being built for Paladini, from approximately May 10 to June 8, 1923, were you not?

A. Yes.

Q. How long did you remain at Point Reyes while you were working there?

(Testimony of Fred Woods.)

A. I remained there most all the time we were there.

Q. That was about four weeks?

A. Longer than that.

Q. While you were there did you go and come back and forth to San Francisco?

A. I came once.

Q. And did you then stay up there the rest of the time? A. Yes.

Q. When you came back, what boat or vessel did you take to come back to San Francisco on?

A. We came in on the "Corona."

Q. When you came back to San Francisco the last time, on June 8, what vessel did you take?

A. The "Three Sisters"; that was when we came in with the barge.

Q. What vessel did you go up on the first time?

A. The "Three Sisters."

Q. Did you ask permission to come back to San Francisco on the "Three Sisters," on the last voyage? A. No, sir.

Q. Did you hear the captain say anything to you, or to anyone [333] else, about your occupying a particular position on the "Three Sisters"?

A. No, sir.

Q. Do you remember what you did after the "Three Sisters" got outside of the bell buoy, as to whether or not you played cards?

A. Shortly after we left the wharf, I made coffee and a light lunch for the boys, and it was quite a while before we reached the city.

(Testimony of Fred Woods.)

Q. What did you do in the meantime, what were you doing just prior to the accident?

A. Oh, we were just walking around the boat.

Q. Just prior to the accident. When the accident happened, what were you doing?

A. Playing cards.

Q. How close was the tow-line to you at any time while you were sitting there in the stern of the boat?

A. Oh, I don't know, I should say six or seven feet.

Q. How much?

A. About seven feet, probably.

Q. Did you notice the barge at any time while you were coming back to San Francisco?

A. I didn't pay very particular attention to it, because I was busy playing cards.

Q. While you were sitting back there playing cards, or just before that time, did the captain come back to the stern of the boat at any time?

A. I believe he came back there to clean a few trout for Mr. Carlsen during the time we were there.

Q. Did you see what it was that struck Mr. Carlsen and Mr. Sauder? A. No, sir.

Q. You just know they were sitting there and got struck? A. Yes, sir.

Mr. HEIDELBERG.—I think that is all. I think the rest, your Honor, would be cumulative.

[334]

(Testimony of Fred Woods.)

Cross-examination.

Mr. LILLICK.—Q. Did you help them load the launch with the supplies?

A. I put the supplies down on the wharf, and the boys loaded them on to the boat.

Q. The boys did the loading on to the boat?

A. Yes.

Q. When you got on the "Three Sisters," where did you step down on her? A. I stepped down amidships.

Q. Was that aft of the house? A. Yes.

Q. What was there forward of the house, on the deck forward?

A. The stove was forward, and the steel cots.

Q. Where were the other things piled?

A. There was quite a lot of stuff piled on the port side; the port side was entirely blocked.

Q. Do you remember the man shaving in the galley? A. No, sir.

Q. While you were making coffee, wasn't there a man in there shaving?

A. I don't see how he could be, because there wasn't any room.

Mr. HEIDELBERG.—I object to that as not cross-examination, your Honor. I purposely limited my direct examination.

The COURT.—Yes. I will sustain the objection.

Mr. LILLICK.—No further cross-examination.

TESTIMONY OF EDWARD ROWE, FOR
CLAIMANTS.

EDWARD ROWE, called for the answering claimants, sworn.

Mr. HEIDELBERG.—Q. Mr. Rowe, you remember of the pile-driving crew working for Healy-Tibbitts at Point Reyes building a pier, or wharf, for A. Paladini, Inc., from on or about May 10th to about June 8th, 1923, were you not?

A. Yes, sir.

Q. During the time that you were building this wharf, did you stay at Point Reyes all the time, or did you come back to San Francisco at week-ends?

[335] A. Yes, Saturdays.

Q. You came back Saturdays. When would you go back to Point Reyes?

A. On Monday morning.

Q. What vessels would you travel back and forth on?

A. Well, the first time I went I went on the "Three Sisters." Well, I guess it was about a standoff while I was there.

Q. Do you mean on the "Corona" and on the "Three Sisters," that it was about a standoff?

A. Yes. I went on the "Three Sisters" first.

Q. And you came back on the "Three Sisters"?

A. Yes.

Q. Do you remember what boat it was you went up on to Point Reyes the week before the accident?

A. No, I don't just exactly remember.

(Testimony of Edward Rowe.)

Q. Do you remember anything happening at the wharf—just to refresh your recollection as to what boat it was—just before you started off on your journey the last time?

A. Yes, there was one day there something happened; it was not very much, though.

Q. It happened on the “Three Sisters,” didn’t it, so that you know that at one time you went up on the “Three Sisters”? A. Yes.

Q. When you started back, or at any time before your journey was commenced to San Francisco, or at any time on June 8th, did you ask the captain’s permission to come down to San Francisco on the “Three Sisters”? A. No.

Q. At any time during that voyage, or while you were on the “Three Sisters,” did the captain ever tell you, or tell anyone else in your presence, what part or portion of that vessel you were to occupy?

A. No, he didn’t.

Q. Did you ever hear him warn you, or hear him warn anyone else about staying away from the tow-line? A. No, I didn’t. [336]

Mr. HEIDELBERG.—That is all.

Mr. LILLICK.—That is all.

TESTIMONY OF HENRY S. HEIDELBERG, FOR CLAIMANTS.

HENRY S. HEIDELBERG, called for the answering claimants, sworn.

Mr. BELL.—Q. Mr. Heidelberg, you are attorney for Mr. Carlsen and Mr. Sauder in this case?

(Testimony of Henry S. Heidelberg.)

A. I am.

Q. Did you have at any time any conversation with Mr. Figari, which you remember?

A. Yes. I first met Mr. William Figari about three months ago, and then I met him again Monday a week ago. At both times I had conversations on the happening of this accident, and the securing of the bridle and equipment.

Q. What were those conversations?

A. The first time I saw Mr. Figari Mr. Carlsen was along with me, and—

Mr. LILLICK.—Will you pardon me, Mr. Heidelberg. What is the purpose of this examination, Mr. Bell? You are now calling for hearsay.

Mr. BELL.—The purpose is in respect to impeaching Mr. Figari's testimony, which was gone into at the time that he was on the stand. There were two conversations.

Mr. LILLICK.—Will you specify the particular point of impeachment?

Mr. BELL.—With respect to the telephone conversation of Mr. Brown, securing the barge for Paladini, and with respect, also, to what Mr. Figari said in respect to this bridle.

Mr. LILLICK.—Will you confine the statements to that?

Mr. BELL.—Q. Confine your statements accordingly, Mr. Heidelberg.

A. I had a conversation with Mr. Figari on Monday a week ago, at Crowley Launch & Tugboat Company's office; Mr. Carlsen was present; Mr.

(Testimony of Henry S. Heidelberg.)

Figari was present, and I [337] was present. Mr. Figari at that time told me that Martin Brown telephoned him and asked for a bridle. He said he told Mr. Brown that he didn't have any bridle. Brown said to him, "You will have to get us one." So Willie Figari said, "I got him a bridle, I saw one on a boat and I told the captain to put it upon the wharf, I don't know how it got down to Pier 46." He says he thought Mr. Brown came and got it himself. I asked Mr. Figari if he knew for what purpose this bridle was to be used, and he said he did not, that they didn't tell him. That is all the conversation I had with him.

Mr. BELL.—That is all.

Mr. LILLICK.—No cross-examination.

TESTIMONY OF ALEXANDER PALADINI, FOR CLAIMANTS (RECALLED).

ALEXANDER PALADINI, recalled for answering claimants.

Mr. HEIDELBERG.—Q. Mr. Paladini, you were visited by Joseph J. McShane, were you not, about five or six weeks after the happening of this accident? A. No, sir.

Q. When do you say it was you first received a visit from Joseph McShane, an attorney-at-law, after this accident?

A. I met Mr. McShane about three months after the accident, down in my market; he came down to the market and wanted to get some fish, and

(Testimony of Alexander Paladini.)

while he was getting some fish he asked me about some insurance on the boats, about some men that were hurt on the "Three Sisters." I then took him upstairs to my secretary, Mr. Chicca, and introduced him to my secretary, and I left him there.

Q. Didn't you tell me out in the hall, here, the other day, that you did have a conversation with Mr. McShane about five or six weeks after the happening of this accident, and that [338] he asked you at that time what you were going to do for these men, and that you told him that it was an accident, and that you would do nothing for them, but you would help them with any insurance if you could? A. I did not.

Q. Didn't you have that conversation with me outside in the hall, here? A. No, sir.

Q. What conversation did you have with me relating to that: Just give the substance of it? What did you say to me?

A. The conversation we have had since I met you, you said, "Good morning, Mr. Paladini," and I, in return, said, "Good morning," to you. We didn't say anything. If it was anything, it was only in a casual way. It was nothing about the case, at all. I said nothing to you about this case.

Q. Didn't you talk to me about Mr. Joseph McShane coming down to your place?

A. You confine yourself to the time, and then I will say "Yes" or "No." You say five or six weeks, and I say no.

(Testimony of Alexander Paladini.)

Q. It was last Wednesday when you had the conversation with me.

A. No, you are wrong when you say that Mr. McShane came down to see me five or six weeks afterwards, because he did not.

Q. Didn't you have a conversation with me out in the hall of this building last Wednesday, in which you told me that it is true Mr. McShane did come down and see me about six weeks afterwards and asked me what I was going to do for these men, and that I told him it was an accident, and that I didn't feel like I should do anything, but that I would help them out with the insurance company to get the compensation?

A. You are wrong, Mr. Heidelberg, when you say five or six weeks.

Q. Mr. Paladini, you had a contract, did you not, with the Crowley Company, by which you secured this barge and its equipment? [339]

Mr. LINGENFELDER.—Mr. Heidelberg, I will state the facts regarding that. Mr. Heidelberg telephoned me, your Honor, and demanded the charter of the barge, and to know whatever insurance we had upon it. I searched Mr. Paladini's files but could not find the charter-party. I then went to Mr. Crowley's office, and we found a charter-party between the Paladini Company, the signature to which, on behalf of the Paladini Company, was by Alexander Paladini, now on the witness-stand, and the Crowley Company, calling for a rental of \$10 a day, payable to the

(Testimony of Alexander Paladini.)

owner, and providing for insurance in the amount of \$6,000 in favor of the owner. Paladini & Co., after entering into this charter-party, insured the barge for \$8,000.

Mr. HEIDELBERG.—That statement will be accepted as evidence. That is all.

Cross-examination.

Mr. LILLICK.—Q. Will you recite your recollection of the conversation you had with Mr. Heidelberg, in the hall, last Wednesday, what he said to you and what you said to him, as nearly as you can remember it?

A. I don't remember any conversation at all; I remember speaking to Mr. Heidelberg. All I remember is saying "Good morning," and a few little things like that. It didn't amount to anything. Regarding his telling me about five or six weeks, Mr. McShane came down to my place, but the five or six weeks is entirely wrong. He did come down in about three months. What I mentioned a while ago is all I heard. Then I went back east and did not return for 2½ or 3 months. When I came back my secretary, Mr. Chicca, told me we were served with papers by Mr. Heidelberg and Mr. McShane. That is all I know about it.

Q. Then coming back to the conversation that you had with Mr. McShane after the accident, whenever it was, whether it was [340] five or six weeks afterwards or whether it was three months afterwards, did Mr. McShane, at that con-

(Testimony of Alexander Paladini.)

versation, say anything to you about the men making claim against Paladini, Inc.?

A. No, not at that time.

Q. When did you first hear that the men were going to make a claim against Paladini, Inc.?

A. Well, the first I knew about was when I returned from the east.

Q. And can you fix approximately how long after June 8, 1923, that was?

A. I returned from the east in the latter part of November. When I came back from the east in the latter part of November my secretary told me we were served with papers regarding these two men that were hurt on our boat.

Q. And that was the first time you had heard that they were making claim against Paladini?

A. Yes.

Mr. HEIDELBERG.—We now offer in evidence the deposition, taken by stipulation, of John True Urquhart, another member of this crew. I would ask permission to read it. It is short, and it is very enlightening. Before reading it, I want to put Mr. Carlsen on the stand for the purpose of showing that Mr. Urquhart worked for about 20 years for Haviside, in this city and county, during which time his business was the manufacture and making of bridles and equipment such as these. You don't know that to be the fact, do you, gentlemen?

Mr. LILLICK.—No, I do not.

Mr. HEIDELBERG.—Then I will call Mr. Carlsen.

TESTIMONY OF WILLIAM CARLSEN, FOR
CLAIMANTS (RECALLED).

WILLIAM CARLSEN, recalled for answering claimants.

Mr. HEIDELBERG.—Q. Do you know True Urquhart?

A. Yes, I have known him for the last twenty years, or so. [341]

Q. Do you know what his previous employment was in the city and county of San Francisco, prior to the time he started working for you?

A. I have known him as a rigger all the time. It is only here recently that he started in pile-driving. I have known him to be superintendent for Smith, Rice, and I have known him to be superintendent for Mr. Haviside.

Q. What is Haviside & Co.? A. Ship riggers.

Q. And they have equipment—bridles, and shackles and rope, and they deal in those things, don't they?

A. They make them for their own use, and also for ships; they make rigging.

Mr. HEIDELBERG.—That is all.

Mr. LILLICK.—No questions.

Mr. HEIDELBERG.—I will now read the deposition of John True Urquhart. (Reads.)

The COURT.—We will suspend now until two o'clock.

(A recess was taken here until two o'clock P. M.)

[342]

AFTERNOON SESSION.

TESTIMONY OF JOSEPH J. McSHANE, FOR
CLAIMANTS.

JOSEPH J. McSHANE, called for the answering claimants, sworn.

Mr. HEIDELBERG.—Q. Mr. McShane, you are an attorney at law? A. Yes.

Q. And you are acquainted with Mr. Carlsen and Mr. Sauder, claimants in this case?

A. Yes.

Q. When was the first time that you saw Mr. Carlsen?

A. I saw Mr. Carlsen for the first time at a visit that he made to my office about a week after he left the hospital.

Q. Bearing in mind the date of June 8, 1923, how long would you say it was after that time that you first saw Mr. Carlsen?

A. That I could not tell you, to be certain about, but I know that he told me he had been out of the hospital about a week at that time.

Q. And at that time did you see Mr. Sauder?

A. No.

Q. Where was Mr. Sauder, if you know?

A. I don't know, other than what I was informed by Mr. Carlsen.

Q. Did you see Mrs. Sauder at that time?

A. I saw Mrs. Sauder at about that time, yes.

Q. And at that time you had not seen Mr. Sauder at all? A. No.

(Testimony of Joseph J. McShane.)

Q. You later on saw him after *you* came out of the hospital, didn't you?

A. After he came out of the hospital I did, yes.

Q. Did you ever meet Mr. Alec Paladini in connection with this case? A. Yes.

Q. How long was it that you saw Mr. Alec Paladini for the first time after this accident?

A. Well, I saw him about a week after the visit of Mr. Carlson to my office, during the week, I would say.

Q. What would you say as to how long after the accident that [343] was: Was it five weeks, was it six weeks, seven weeks, or eight weeks, or when was it?

A. I have forgotten now just how long Mr. Carl- sen was in the hospital, but it was during the week after the visit of Mr. Carlson to my place. Mrs. Sauder came to my office on his second visit.

Q. And then after Mr. Carl- sen had been there, how long was it after you saw Mr. Carl- sen for the first time that you saw Mr. Paladini?

A. It was perhaps three or four days. It was a week at the most. I attended to the matter right away.

Q. Did you have a conversation with Mr. Pala- dini in relation to this accident? A. Yes, I did.

Q. Whereabouts? A. In his office.

Q. Just what was the conversation, the sub- stance of it?

A. It was late in the afternoon that I was there. I spoke to Alec downstairs, and we went upstairs

(Testimony of Joseph J. McShane.)

to Mr. Chicca's office, looking at various ships, and he pointed out the pictures of the ships on the wall. I told Alec downstairs that I had come down to see him in reference to this accident, and wanted to know what it was his intention to do with reference to taking care of these men. That was the sole purpose of the visit at that time.

Q. And you know that was within the week after you first saw Mr. Carlsen? A. Oh, yes.

Cross-examination.

Mr. LILLICK.—Q. Refreshing your recollection about that, is it not true that in your talk with Mr. Paladini you came down and told him that you were going to try to get what you could for the men on their compensation, and that at this conversation with Mr. Paladini and with Mr. Chicca no word was said about your commencing suit against Paladini, Inc.?

A. No, I [344] didn't tell him I was going to commence suit. I did not mention anything about compensation, though, that I know of. I merely went down there and asked Mr. Paladini what was he going to do with reference to these men.

Q. What did Mr. Paladini say?

A. Well, he said that as far as he was concerned, he was very sorry for the occurrence, that it was an accident. I believe that he and Mr. Chicca and I then drifted on on to some sort of a social conversation, and got away from this subject.

Q. You are a friend of Mr. Paladini's?

(Testimony of Joseph J. McShane.)

A. For a good many years I have known Mr. Paladini.

Q. Are you sure that nothing was said in that conversation about obtaining workmen's compensation, about obtaining workmen's compensation for the men?

A. No. I knew nothing concerning Mr. Paladini's situation about compensation. The compensation, if there was any, was an afterthought.

Q. Would you go so far as to say that nothing was said at that conversation about workmen's compensation?

A. Yes, I would say that, because the thought that was in my mind at that time about compensation was—

Q. Well, pardon me, we are not concerned with what was in your mind.

Mr. HEIDELBERG.—I think that he should be allowed to finish his answer, your Honor.

Mr. LILLICK.—No, I think not. I asked him only for what was said.

The COURT.—Yes, just what was said.

Mr. LILLICK.—That is all. [345]

TESTIMONY OF WILLIAM CARLSEN, FOR CLAIMANTS (RECALLED).

WILLIAM CARLSEN, recalled for answering claimants.

Mr. HEIDELBERG.—Q. Mr. Carlsen, where were you struck by this rope, if you were struck by the rope?

(Testimony of William Carlsen.)

A. Well, I don't know. I was black from here down, and all around here, and my jaw was hanging down here, and on the back of my head. I don't know where I was struck. All this neck cord was torn loose from my skull. I don't remember anything hitting me at all, I don't know what struck me.

Q. You were sitting at that time, so you have been informed, with your back to the stern of the boat?

A. I know that is the way I sat myself back there.

Q. And you know that the vertebra in your neck was dislocated? A. Yes.

Q. And you were forced to wear a collar for some time on account of the neck injuries, weren't you?

Mr. LILLICK.—That is objected to as leading. Of course, I don't like to make any unnecessary objections.

Mr. HEIDELBERG.—Q. What appliance did you wear on the back of your neck after the injury?

Mr. LINGENFELTER.—We object to this line of inquiry. This is a matter for the Commissioner, as to the extent of the loss.

The COURT.—Well, it won't do any harm, and it might throw some light on the way the accident occurred.

A. The doctor sent me over here to Hittenberger's, and he made a plaster-of-Paris cast around

(Testimony of William Carlsen.)

my neck to get the model for a leather collar reinforced with German silver, and I had to wear that.

The COURT.—Q. How was the other man hurt, what was the nature of his injury?

A. Fractured skull, I believe, and a blood clot on the brain. [346]

Mr. HEIDELBERG.—Q. When did you leave the hospital? How long were you in the hospital?

A. I was not in the hospital very long; I was only in the hospital a week or ten days, I don't just remember.

Q. How long after the accident was it that you saw Mr. McShane for the first time?

A. At the very extreme it would not be over five weeks, at the very latest.

Mr. HEIDELBERG.—That is all.

Mr. LILLICK.—No questions.

TESTIMONY OF JOHN SAUDER, FOR CLAIMANTS.

JOHN SAUDER, called for answering claimants, sworn.

Mr. HEIDELBERG.—Q. Mr. Sauder, you are one of the answering claimants in this case, are you not? A. I am.

Q. You were employed by Healy-Tibbitts at Point Reyes during the month of May and up until June 8, 1923, in building a pier or wharf for A. Paladini, were you not?

A. I believe I was, from hearsay; I have no knowledge of it.

(Testimony of John Sauder.)

Q. You do remember, do you not, Mr. Sauder, that you went over to Point Reyes and came back sometime during that time, do you? A. I do.

Q. Do you remember when you first went over to Point Reyes? A. I do.

Q. What vessel did you go on at that time?

A. On the "Corona."

Q. Do you remember going over at any time, or of coming back?

A. I remember coming back on the "Corona" once, I believe.

Q. Do you remember ever being transported back and forth on the "Three Sisters"?

A. I only have a slight recollection of being on the "Three Sisters," coming back one trip.

Q. Just before you went over for the last time, do you remember [347] any occurrence that took place on the dock between the captain of the "Three Sisters" and one of his crew?

A. I remember a wrangle on the bulkhead that morning.

The COURT.—What morning was that?

A. I believe that was the Monday morning before the accident.

Q. When you were going up?

A. On the way going up.

Q. And you mean by "the bulkhead," the bulkhead here in San Francisco?

A. The bulkhead here in San Francisco.

Q. After that you don't remember a thing, do you?

A. No, sir.

(Testimony of John Sauder.)

Q. You don't remember working there all week, do you? A. No, sir.

Q. Do you remember coming back on the "Three Sisters" at all on this occasion? A. I do not.

Q. Do you remember getting on the "Three Sisters"?' A. I do not.

Q. You don't remember the accident at all, do you? A. No, sir.

Q. When is the next thing that you remember?

A. I remember waking up and not knowing where I was, or who I was, or anything else.

Q. Where were you at that time?

A. I was in a private ward in the St. Francis Hospital.

Q. And that was some ten days afterwards, was it?

A. I would say it was 15 or 16 days afterwards.

Mr. HEIDELBERG.—That is all.

Mr. LILLICK.—No questions.

Mr. HEIDELBERG.—We have a copy of the charter-party here, and I would like to offer it in evidence. I call the Court's particular attention to the third paragraph thereof.

The COURT.—What is the third paragraph?

Mr. HEIDELBERG.—It reads as follows: [348]

“It is further mutually agreed that while the barge is under hire to the charterer as aforesaid, the owner shall be under no personal liability for damage caused by such barge or any other causes to any cargo or goods, or any other vessel or vessels, or the cargo thereof, or people thereon, or the crew of said barge, or men em-

ployed on board said barge, or to persons or property on shore; and the charterer hereby assumes all of such risks, and hereby undertakes and agrees to hold said barge and her owner harmless from all such claims, and the costs, expenses and attorneys' fees on litigating the same, and all other claims of any kind or character, whether like or unlike these enumerated, which shall arise from the use of said barge by the charterer, or from any act done on board or in loading, repairing, or serving her."

It is signed by Alex. Paladini, as president, on behalf of A. Paladini, Inc., and by Robert W. Greene, on behalf of the Crowley Launch & Tugboat Company.

Mr. LILLICK.—If counsel is offering the charter for any purpose other than the paragraph just read, that is entirely immaterial. It is not relevant to any of the issues in this case, and would be in evidence of contractual liability, if any, to the Crowley Launch & Tugboat Co.

Mr. HEIDELBERG.—We offer it for all purposes, to show who was the charterer of the barge.

The COURT.—I will let it in.

(The document was here marked Claimant's Exhibit "B.")

Mr. BELL.—I wish to call to the Court's attention, since the Court has personally inspected the vessel, the diagram or chart of her which has been offered in evidence here, and which [349] does not seem to me to accord with the vessel as she appeared on a personal examination. I would like to ask

counsel whether or not the diagram here is an accurate diagram drawn to the exact scale of the vessel?

Mr. LINGENFELTER.—I believe, in view of the ship's articles, Mr. Bell, that that diagram is slightly inaccurate. However, for rough purposes, I believe it is sufficient.

The COURT.—How was the diagram made—was it made by actual measurements?

Mr. LINGENFELTER.—The diagram was made from a map which we secured from Cryer, the original builder of the "Three Sisters." I think the scale was taken from that. We did not have the ship's articles before us at that time. There is some discrepancy here as to the size of the vessel as shown by that map and the ship's articles.

The COURT.—Probably you took a planimeter and measured the distance on the original drawings.

Mr. LINGENFELTER.—I think that is very likely the way it is done, your Honor.

The COURT.—Then it might have occurred in that way; it might have occurred on account of the shrinkage of the paper.

Mr. BELL.—I simply wish to have it appear that the vessel, itself, in various respects, differs from this diagram.

The COURT.—Do you mean as to size?

Mr. BELL.—As to size. Also I call your Honor's attention to the fact that there was no flagpole in the stern of the vessel. Also, that the house, here, is not an accurate representation of the house. Your Honor will remember that the pilot-house was slightly above the galley. I think the dimensions of

the vessel here do not accord with the dimensions of the [350] vessel actually.

The COURT.—Well, we have the registry here. What difference does it make?

Mr. LINGENFELTER.—I want to say to your Honor, in justification of our producing this particular diagram, that the evidence taken before the Commissioner at the time the valuation was fixed in this proceeding, showed that there had been a new house constructed. As I think about it now, very likely this diagram, being taken from the original diagram of the builder, had the original house upon it, and not the house which was later put on.

The COURT.—I understand it, anyway.

Mr. BELL.—I wish also to renew my demand upon counsel for the certificate of inspection of the “Three Sisters” by the local inspectors, particularly their certificate of inspection of her with respect to the carriage of passengers by her, as to the number of passengers, if any.

Mr. LILLICK.—Counsel, I think, must know that we have no such certificate. The vessel was not a passenger-carrying vessel.

Mr. HEIDELBERG.—We rest.

The COURT.—The Clerk calls my attention to the fact that that diagram has never been offered in evidence.

Mr. LILLICK.—Thank you very much for suggesting it, Mr. Clerk. We will offer it in evidence. I think it will be of very little aid, other than refreshing the Court’s recollection as to just what the situation was.

The COURT.—It is of some use.

Mr. LILLICK.—We offer it in evidence as our next exhibit.

(The diagram was here marked Petitioner's Exhibit 4.)

We rest, your Honor. That is our case. [351]

(Thereupon, by stipulation of counsel, the cause was submitted on briefs to be filed in 5, 5, and 5.) [352]

PETITIONER'S EXHIBIT No. 1.

W. H. HEALY, CHARLES C. HORTON, JOHN H. EDWARDS,
President. Vice-President. Secty. & Treas.

HEALY-TIBBITS CONSTRUCTION CO.

Incorporated.

Builders and Contractors.

64 Pine Street,
San Francisco, Cal.

April 25, 1923.

Fireproofing & concrete construction
excavating, pile-driving and con-
crete foundations, grading and
steam shovel work.

Wharves, bridges and ware-
houses, teaming, general
contracting.

Mr. A. Paladini, Inc.,
Washington Market,
San Francisco, Calif.

Dear Sir:

Referring to the construction of wharf for you at Pt. Reyes, we propose to complete the structure according to the blue-print which we are enclosing you with this letter for the sum of \$5950.00.

This bid is based on using untreated piles for the first 120 ft. of the trestle from the shore line out and creosoted piles for the balance of the work.

The lumber which we propose to furnish will be good sound used lumber. We have figured upon delivering all materials and equipment necessary to complete the work to you in San Francisco; you to freight same to P. Reyes and deliver it to our men at the site of the wharf; the piles and timbers for caps to be cast over-board; the planking and stringers to be made up in rafts so as to land same ashore. The engine can be taken ashore on top of a raft of timber or on a small barge if you will have one available at the work. The balance of the material such as bolts, spikes, wire rope and tools can be landed ashore [353] from a raft. We do not think it would be safe or advisable to attempt to tow any of the piles from San Francisco to Pt. Reyes. It is our opinion that these piles will have to be carried on one of your boats and that several trips will be necessary as there are 96 piles in the structure.

When the work is finished, we have figured that you are to transport our equipment back to San Francisco, and that all of this transportation both to Pt. Reyes and return to San Francisco when the work is finished, is to be done at your expense and without cost to us.

We have also based our price upon the understanding that there is water available for use in our boiler for driving piles. If sufficient water cannot be had, it will be necessary to bring in water for this purpose which we have not included in our price and of course you will have to do this at your

own expense. Our consumption is approximately 1000 gallons every day we are working.

We have figured that our men will have to sleep in tents close to the work, and that we will have to arrange for them to prepare their own meals. This expense we will take care of ourselves with the understanding that you will deliver supplies to them three times a week which we will furnish you in San Francisco.

Hoping to receive your favorable consideration, we are

HEALY-TIBBITTS CONSTRUCTION CO.
CHARLES C. HORTON.

CCH-L.

Enc. [354]

ARTICLES OF AGREEMENT.

Made this — day of May one thousand nine hundred and twenty-three BETWEEN A. Paladini, Inc., hereinafter called the Owner, and Healy-Tibbits Construction Company, hereinafter called the Contractor,

WITNESSETH: The words Owner, Contractor and Superintendent used herein in the singular shall include the plural, and the masculine the feminine.

FIRST. The Contractor agrees, within the space of sixty working days from and after the date of this agreement to furnish the necessary labor and materials, including tools, implements and appliances, required, and perform and complete in a workmanlike manner, free from any and all liens

and claims of artisans, materialmen, sub-contractors and laborers thereon, a wharf having a total length of two hundred and forty feet; 120 ft. of which is to be 10 ft. wide; 110 feet 30 feet wide and the outer end 50 feet wide; all in accordance with blue-print entitled "Pier & Approach at Point Reyes, California, for A. Paladini Co.," which has been signed by both parties to this agreement and made a part hereof, and described in and by, and in conformity with the written proposal of said Healy-Tibbits Construction Company addressed to A. Paladini Company, dated April 25, 1923, which is hereby incorporated into and made part of this agreement.

SECOND. Said Architect shall provide and furnish to the Contractor all details and working drawings necessary to properly delineate said plans and specifications; and the work is to be done and the materials furnished in accordance therewith under the direction and supervision and subject to [355] the approval of said Architect, or a Superintendent selected and agreed upon by the parties hereto, within a fair and equitable construction of the true intent and meaning of said plans and specifications.

THIRD. A reasonable allowance for the time during which the Contractor is delayed in said work by the acts or neglects of the Owner or his employees, or those under him by contract or otherwise, or by the acts of God which the Contractor could not have reasonably foreseen and provided for, or by stormy and inclement weather which delays the work, or by any strikes, boycotts, or like

obstructive action by employee or labor organizations, or by any general lock-outs or other defensive action by employers, whether general, or by organizations of employers, shall be added to the aforesaid time for completion.

(Form A.)

FOURTH. Said wharf is to be erected to the satisfaction of J. Del Favero, superintendent for said A. Paladini, Inc.

FIFTH. The Owner agrees, in consideration of the performance of this agreement by the Contractor, to pay, or cause to be paid, to the Contractor, his legal representatives or assigns, the sum of Five thousand nine hundred and fifty dollars (5950.00) dollars in United States Gold Coin, at times and in the manner following, to wit:

On the 5th day of Each month the Contractor is to be paid seventy-five per cent of the value of materials furnished and delivered to said A. Paladini, Inc., in San Francisco for delivery to site of wharf at Pt. Reyes and in addition thereto seventy-five per cent of Labor expended in the construction of said wharf. [356]

The balance of twenty-five per cent and any other sum due said Healy-Tibbitts Construction Company under this agreement is to be paid thirty-five days after the completion of said structure.

PROVIDED, that when each payment or installment shall become due, and at the final completion of the work, certificates in writing shall be obtained from the said Architect, stating that the payment or installment is due or work completed, as the case

(Testimony of Charles Kruger.)

may be, and the amount then due; and the said Architect shall at said times deliver said certificates under his hand to the Contractor, or in lieu of such certificates, shall deliver to the Contractor in writing, under his hand, a just and true reason for not issuing the certificates, including a statement of the defects, if any, to be remedied, to entitle the Contractor to the certificate or certificates. And in the event or failure of the Architect to furnish and deliver said certificates, or any of them, or in lieu thereof the writing aforesaid, within three days after the times aforesaid, and after demand therefor made in writing by the Contractor, the amount which may be claimed to be due by the Contractor, and stated in the said demand made by him for the certificate, shall, at the expiration of said three days, become due and payable, and the Owner shall be liable and bound to pay the same on demand.

In case the Architect delivers the writing aforesaid in lieu of the certificate, then a compliance by the Contractor with the requirements of said writing shall entitle the Contractor to the certificate.

SIXTH. For any delay on the part of the Owner in [357] making any of the payments or installments provided for in this contract after they shall become due and payable, he shall be liable to the Contractor for any and all damages which the latter may suffer; and such delay shall, in addition, operate as an *addivition* extension of the time for completion aforesaid for the length of time of such

delay. And such delay, if for more than five days after date when said payments or installments shall have respectively become due and payable, as in this agreement provided, shall, at the option of the Contractor, be held to be prevention by the Owner of the performance of this contract by the Contractor.

SEVENTH. The specifications and drawings are intended to co-operate, so that any work exhibited in the drawings are not mentioned in the specifications, or *vice versa*, are to be executed the same as of both mentioned in the specifications and set forth in the drawings, to the true intent and meaning of the said drawings and specifications when taken together. But no part of said specifications that is in conflict with any portion of this agreement, or that is not actually descriptive of the work to be done thereunder, or of the manner in which said work is to be executed, shall be considered as any part of this agreement, but shall be utterly null and void, and anything that is expressly stated, delineated or shown in or upon the specifications or drawings shall govern and be followed, notwithstanding anything to the contrary in any other source of information or authority to which reference may be made.

EIGHTH. Should the Owner or Architect, at any time during the progress of the work, request any alterations or deviations in, additions to, or omissions from, this contract [358] or the plans or specifications, either of them shall be at liberty to do so, and the same shall in no way affect

or make void this contract; but the amount thereof shall be added to, or deducted from, the amount of the contract price aforesaid, as the case may be, by a fair and reasonable valuation. And this contract shall be held to be completed when the work is finished in accordance with the original plans, as amended by such changes, whatever may be the nature or extent thereof. No such change or modification shall release or exonerate any surety or sureties upon any guaranty or bond given in connection with this contract.

NINTH. The rule of practice to be observed in the fulfillment of the last foregoing paragraph (eight) shall be that, upon the demand of either the Contractor, Owner or Architect, the character and valuation of any or all changes, omissions, or extra work, shall be agreed upon and fixed in writing, signed by the Owner or Architect and the Contractor, prior to execution.

TENTH. Should any dispute arise between the Owner and Contractor, or between the Contractor and Architect, respecting the true construction of the drawings or specifications, or respecting the manner or sufficiency of the performance of the work, the same shall, in the first instance, be decided by the Architect; but should either of the parties be dissatisfied with the justice of such decision, or should any dispute arise between the parties hereto respecting the valuation of extra work, work done or work omitted, the disputed matter shall be referred to, and decided by two competent persons who are experts in the business

of building—one to be selected by the Owner or [359] Architect, and the other by the Contractor; and in case they cannot agree, these two shall select an umpire, and the decision of any two of them shall be binding on all parties. Provided, however, that the work shall not be interrupted or delayed pending such decision, but shall proceed in accordance with the decision of the Architect, and said arbitrators shall have power to award adequate compensation to the Contractor in case they do not find such decision of the Architect to have been just.

ELEVENTH. Should the Contractor fail to complete this contract, and the works provided for therein, within the time fixed for such completion, due allowance being made for the contingencies provided for herein, he shall become liable to the Owner for all loss and damages which the latter may suffer on account thereof, but not to exceed the sum of \$5.00 per day for each day said works shall remain uncompleted beyond such time for completion.

TWELFTH. In case said work herein provided for should, before completion, be wholly or partially destroyed by fire, defective soil, earthquake or other act of God which the Contractor could not have reasonably foreseen and provided for, then the loss occasioned thereby shall be sustained by the Owner, and the Owner to agree to carry an Insurance for the full amount of the labor and material as the work progresses, in the joint name of the owner and Contractor. All moneys re-

ceived under such policies are to be divided between the Owner and Contractor as their interests may appear.

THIRTEENTH. The payment of the progress payments by the Owner shall not be construed as an absolute acceptance of the work done up to the time of such payments, except as to [360] such matters as are open and obvious; but the entire work is to be subject to inspection and approval of the Architect or Superintendent as to defects not obvious upon inspection during the progress of the work at the time when it shall be claimed by the Contractor that the contract and works are completed; but the Architect or Superintendent shall exercise all reasonable diligence in the discovery, and report to the Contractor, as the work progresses, of materials and labors which are not satisfactory to the Architect or Superintendent so as to avoid unnecessary trouble and cost to the Contractor in making good defective parts: otherwise, any objection thereto shall be deemed to have been waived.

FOURTEENTH. Should the Contractor, at any time during the progress of the work, refuse or neglect, without the fault of the Owner, Architect or Superintendent, to supply a sufficiency of materials or workmen to complete the Contract within the time limited herein, (due allowance being made for the contingencies provided for herein) for a period of more than five days after having been notified by the Owner in writing to furnish the same, the Owner shall have power to

furnish and provide said materials or workmen to finish the work; and the reasonable expense thereof shall be deducted from the amount of the contract price.

IN WITNESS WHEREOF, the said parties have duly executed this Contract, the day and year first above written.

A. PALADINI, INC. (Seal)

By ALEX PALADINI, Pres. (Seal)

HEALY, TIBBITTS CONSTRUCTION CO. (Seal)

[Seal] By CHAS. C. HORTON,

Vice-President. (Seal) [360½]

As a part of said transaction with the foregoing contract, we, the undersigned, hereby undertake and guarantee that — the Contractor named therein, will fully and faithfully keep and perform all the obligations thereof on his part to be performed, and will deliver said — fully completed within the time therein specified free all liens and claims of any person performing labor thereon or furnishing materials therefor, or both. The liability of the surety is hereby fixed in the sum of — Dollars.

_____, Surety.

_____, Surety.

(Trademark.)

THE BUILDERS' EXCHANGE

San Francisco,

California.

Incorporated July 5, 1890.

A. PALADINI COMPANY, Incorporated,

with

HEALY-TIBBITTS CONSTRUCTION CO.

Dated _____ 191—

FILED AT THE REQUEST OF

..... A. D. 191.... at min. past
..... o'clock M. County
records.,

Recorder.

By,

Deputy Recorder. [361]

SUPPLEMENTAL AGREEMENT.

ARTICLES OF AGREEMENT.

Made this first day of June one thousand nine hundred and twenty-three

BETWEEN A. Paladini, Inc. hereinafter called the Owner, and Healy-Tibbitts Construction Co. hereinafter called the Contractor

WITNESSETH: The words, Contractor and Superintendent used herein in the singular shall include the plural, and the masculine the feminine.

FIRST. The Contractor agrees, within the space of sixty working days from and after the date of this agreement to furnish the necessary labor and materials, including, tools, implements and appliances, require, and perform and complete in

a workmanlike manner, free from any and all liens and claims of artisans, material men, sub-contractors and laborers thereon, an additional 40 ft. to the 30 ft. section of the Wharf; all in accordance with the blue print entitled "Pier and Approach at Point Reyes, California, for A. Paladini Company, Inc.," which has been signed by both parties to this agreement and made a part hereof, and described in and by, and in conformity with the written proposal of said Healy-Tibbitts Construction Company addressed to A. Paladini Company, Inc., dated June 1, 1923, which is hereby incorporated into and made part of this agreement.

SECOND. Said Architect shall provide and furnish to the Contractor all details and working drawings necessary to properly delineate said plans and specifications; and the work is to be done and the materials furnished in accordance therewith under the direction and supervision and subject to [362] the approval of said Architect, or a Superintendent selected and agreed upon by the parties hereto, within a fair and equitable construction of the true intent and meaning of said plans and specifications.

THIRD. A reasonable allowance for the time during which the Contractor is delayed in said work by the acts or neglects of the Owner or his employees, or those under him by contract or otherwise, or by the acts of God which the Contractor could not have reasonably foreseen and provided for, or by storm and inclement weather which delays the work, or by *an* strike, boycotts, or like obstructive

action by employee or labor organizations, or by an general lockouts or other defensive action by employers, whether general, or by organizations of employers, shall be added to the aforesaid time for completion.

FOURTH. Said extension is to be erected to the satisfaction of J. Del Favero, Superintendent for said A. Paladini, Inc.

FIFTH. The Owner agrees, in consideration of the performance of this agreement by the Contractor, to pay, or cause to be paid, to the Contractor, his legal representatives or assigns, the sum of Seventeen Hundred Dollars (\$1700.00) dollars in United States Gold Coin, at times and in the manner following, to wit:

On the 5th day of each month the contractor is to be paid seventy-five per cent of the value of materials furnished and delivered to said A. Paladini, Inc., in San Francisco, for delivery to site of extension at Pt. Reyes and in addition thereto seventy-five per cent of labor expended in the construction of said extension. [363]

The balance of twenty-five per cent and any other sum due said Healy-Tibbitts Construction Company under this agreement is to be paid thirty-five days after the completion of said structure.

PROVIDED, that when each payment or installment shall become due, and at the final completion of the work, certificates in writing shall be obtained from the said Architect, stating that the payment or installment is due or work completed, as the case may be, and the amount then due; and

the said Architect shall at said times deliver said certificates under his hand to the Contractor, or in lieu of such certificates, shall deliver to the Contractor in writing under his hand, a just and true reason for not issuing the certificates, including a statement of the defects, if any, to be remedied, to entitle the Contractor to the certificate, or certificates. And in the event or failure of the Architect to furnish and deliver said certificates, or any of them or in lieu thereof the writing aforesaid, within three days after the times aforesaid, and after demand therefor made in writing by the Contractor, the amount which may be claimed to be due by the Contractor, and stated in the said demand made by him for the certificate, shall, at the expiration of said three days, become due and payable, and the Owner shall be liable and bound to pay the same on demand.

In case the Architect delivers the writing aforesaid in lieu of the certificate, then a compliance by the Contractor with the requirements of said writing shall entitle the Contractor to the certificate.

SIXTH. For any delay on the part of the Owner in making any of the payments or installments provided for in [364] this contract after they shall become due and payable, he shall be liable to the Contractor for any and all damages which the latter may suffer; and such delay shall, in addition, operate as an additional extension of the time for completion aforesaid for the length of time of such delay. And such delay, if for more than five days after the date when said payments

or installments shall have respectively become due and payable, as in this agreement provided, shall, at the option of the Contractor, be held to be prevention by the Owner of the performance of this contract by the Contractor.

SEVENTH. The specifications and drawings are intended to co-operate, so that any work exhibited in the drawings are not mentioned in the specifications, or *vice versa*, are to be executed the same as of both mentioned in the specifications and set forth in the drawings, to the true intent and meaning of the said drawings and specifications when taken together. But no part of said specifications that is in conflict with any portion of this agreement, or that is not actually descriptive of the work to be done thereunder, or of the manner in which said work, is to be executed, shall be considered as any part of this agreement, but shall be utterly null and void, and anything that is expressly stated, delineated or shown in or upon the specifications or drawings shall govern and be followed, notwithstanding anything to the contrary in any other source of information or authority to which reference may be made.

EIGHTH. Should the Owner or Architect, at any time during the progress of the work, request any alterations or deviations in, additions to, or omissions from, this contract or the plans or specifications, either of them shall [365] be at liberty to do so, and the same shall in no way affect or make void this contract; but the amount thereof shall be added to, or deducted from, the amount

of the contract price aforesaid, as the case may be, by a fair and reasonable valuation. And this contract shall be held to be completed when the work is finished in accordance with the original plans, as amended by such changes, whatever may be the nature or extent thereof. No such change or modification shall release or exonerate any surety or sureties upon any guaranty or bond given in connection with this contract.

NINTH. The rule of practice to be observed in the fulfillment of the last foregoing paragraph (eight) shall be that, upon the demand of either the Contractor, Owner or Architect, the character and valuation of any or all changes, omissions, or extra work, shall be agreed upon and fixed in writing, signed by the Owner or Architect and the Contractor, prior to execution.

TENTH. Should any dispute arise between the Owner and Contractor, or between the Contractor and Architect, respecting the true construction of the drawings or specifications, or respecting the manner or sufficiency of the performance of the work, the same shall, in the first instance, be decided by the Architect; but should either of the parties be dissatisfied, with the justice of such decision, or should any dispute arise between the parties hereto respecting the valuation of extra work, work done or work omitted, the disputed matter shall be referred to, and decided by two competent persons who are experts in the business of building—one to be selected by the Owner or Architect, and the other by the Contractor; and in

case they cannot [366] agree, these two shall select an umpire, and the decision of any two of them shall be binding on all parties. Provided, however, that the work shall not be interrupted or delayed pending such decision, but shall proceed in accordance with the decision of the Architect, and said arbitrators shall have power to award adequate compensation to the Contractor in case they do not find such decision of the Architect to have been just.

ELEVENTH. Should the Contractor fail to complete this contract, and the works provided for therein, within the time fixed for such completion, due allowance being made for the contingencies provided for herein, he shall become liable to the Owner for all loss and damages which the latter may suffer on account thereof, but not to exceed the sum of \$—— per day for each day said works shall remain uncompleted beyond such time for completion.

TWELFTH. In case said work herein provided for should, before completion, be wholly or partially destroyed by fire, defective soil, earthquake or other act of God which the Contractor could not have reasonably foreseen and provided for, then the loss occasioned thereby shall be sustained by the Owner, and the Owner to agree to carry an Insurance for the full amount of the labor and material as the work progresses, in the joint name of the Owner and Contractor. All moneys received under such policies are to be divided be-

tween the Owner and Contractor as their interest may appear.

THIRTEENTH. The payment of the progress payments by the Owner shall not be construed as an absolute acceptance of the work done up to the time of such payments, except as [367] as to such matters as are open and obvious; but the entire work is to be subject to inspection and approval of the Architect or Superintendent as to defects not obvious upon inspection during the progress of the work at the time when it shall be claimed by the Contractor that the contract and works are completed; but the Architect or Superintendent shall exercise all reasonable diligence in the discovery, and report to the Contractor, as the work progresses, of materials and labors which are not satisfactory to the Architect or Superintendent, so as to avoid unnecessary trouble and cost to the Architect or Superintendent, so as to avoid unnecessary trouble and cost to the Contractor in making good defective parts: otherwise, any objection thereto shall be deemed to have been waived.

FOURTEENTH. Should the Contractor, at any time during the progress of the work, refuse or neglect, without the fault of the Owner, Architect or Superintendent, to supply a sufficiency of materials or workmen to complete the contract within the time limited herein (due allowance being made for the contingencies provided for herein) for a period of more than five days after having been notified by the Owner in writing to furnish the

same, the Owner shall have power to furnish and provide said materials or workmen to finish the said work; and the reasonable expense thereof shall be deducted from the amount of the contract price.

IN WITNESS WHEREOF, the said parties have duly executed this contract, the day and year first above written.

_____. (Seal)

_____. (Seal)

HEALY, TIBBITTS CONSTRUCTION CO. (Seal)

W. H. HEALY, (Seal)

President. [368]

As a part of the same transaction with the foregoing contract, we, the undersigned, hereby undertake and guarantee that — the Contractor named therein, will fully and faithfully keep and perform all the obligations thereof on his part to be performed, and will deliver said — fully completed within the time therein specified free all liens and claims of any person performing labor thereon or furnishing materials therefor, or both. The liability of the surety is hereby fixed in the sum of — Dollars.

_____, Surety.

_____, Surety.

(Trademark.)

THE BUILDERS' EXCHANGE.

San Francisco,

California.

Incorporated July 5, 1890.

with

Dated, 191....

FILED AT THE REQUEST OF

.....A. D. 191...., at min. past

..... o'clockM.....

.....County records

Recorder.

By,

Deputy Recorder. [369]

[Endorsed]: (No.) 18,142. Petitioner's Exhibit
1. Filed Aug. 5, 1924. J. A. Schaertzer, Deputy
Clerk. [370]

PETITIONER'S EXHIBIT No. 2.

Serial Number

File No. L-13034.

109584

Issue Number-1-1.

UNITED STATES DEPARTMENT OF
COMMERCE.

STEAMBOAT INSPECTION SERVICE.

LICENSE TO CHIEF ENGINEER OF STEAM
VESSELS.

THIS IS TO CERTIFY THAT ORVILLE
DAVIS, having been duly examined by the under-
signed United States Local Inspectors, Steamboat
Inspection Service, for the district of San Fran-
cisco, Cal., as to his knowledge of steam machinery

neer of motor vessels, and found competent, is hereby licensed as an Engineer of vessels of any gross tons, and of above fifteen gross tons carrying freight or passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naphtha or electric motors, and of more than sixty-five feet in length, for the term of five years from this date.

Given under our hands this 18th day of February, 1920.

HARRY W. RAVENS,

U. S. Local Inspector of Hulls.

SAVINE L. CRAFT,

U. S. Local Inspector of Boilers. [372]

Serial Number
104268

Filed No. L-13034.
Issue Number—3.

UNITED STATES DEPARTMENT OF
COMMERCE.
STEAMBOAT INSPECTION SERVICE.
LICENSE

TO OPERATE OR NAVIGATE VESSELS NOT MORE THAN SIXTY-FIVE FEET IN LENGTH PROPELLED BY MACHINERY, AND CARRYING PASSENGERS FOR HIRE, AND VESSELS OF FIFTEEN GROSS TONS OR LESS, PROPELLED IN WHOLE OR IN PART BY GAS, GASOLINE, PETROLEUM, NAPHTHA, FLUID, OR ELECTRICITY, AND CARRYING PASSENGERS FOR HIRE.

ORVILLE DAVIS

is hereby licensed under the provisions of Acts of

Congress approved June 9, 1910, and May 16, 1906, by the Board of Local Inspectors, Steamboat Inspection Service, for for the District of San Francisco, Calif., for the term of five years, from the date of issue of this license, to operate or navigate vessels not more than sixty-five feet in length propelled by machinery, and carrying passengers for hire, and vessels of fifteen gross tons or less, propelled in whole or in part by gas, gasoline, petroleum, naphtha, fluid, or electricity, and carrying passengers for hire.

Given under our hands this 30th day of July, 1920.

JAMES GUTHERS,

U. S. Local Inspector of Hulls.

JOSEPH P. DOLAN,

U. S. Local Inspector of Boilers. [373]

INDORSEMENTS OF RENEWAL

INDORSEMENTS OF CHANGE OF MASTER

Renewal No. 1. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Renewal No. 4. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Renewal No. 2. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Renewal No. 3. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Renewal No. 3. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Renewal No. 6. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

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Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

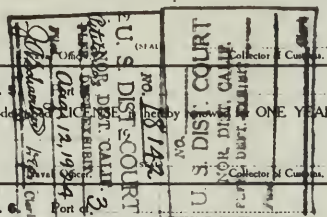
Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.

Port of ... 19 ... having taken the oath required by law, is at present master of the within-named vessel, in lieu of ... late master.



COPIY

DEPARTMENT OF COMMERCE
BUREAU OF NAVIGATION
PERMIT NO. 218372
CAL. NO. 12855
LICENSE OF VESSEL UNDER TWENTY TONS

FOR THE COASTING TRADE
GALLEY THE THREE SISTERS
OF THE No. 7
GROSS 12.00 net,
28.00
San Francisco, Calif.
July 28, 1919
WHEN SURRENDERED:
WHY SURRENDERED:
SUN FISH CO. CUSTOMS SERVICE
PAID
U.S. CUSTOMS
SAN FRANCISCO

Renewal No. 5. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Renewal No. 10. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Renewal No. 6. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Renewal No. 11. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

Renewal No. 9. Port of ... The within-described LICENSE is hereby renewed for ONE YEAR from ... 19

UPON EXPIRATION OF RENEWAL NO. 11, ISSUE A NEW MARINE PAPER ASSIGNING, IF NO OTHER CAUSE, "ALL RENEWAL SPACES FILLED."

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CLAIMANT'S EXHIBIT "B."

THIS AGREEMENT made by and between A. PALADINI, INC., a corporation duly organized and existing under and by virtue of the laws of the State of California, hereinafter called the "CHARTERER," and the CROWLEY LAUNCH AND TUGBOAT COMPANY, a corporation also duly organized and existing under and by virtue of the laws of the State of California, hereinafter called the "OWNER."

WITNESSETH:

That the CHARTERER agrees to rent from the OWNER the barge known as CROWLEY No. 61, and to pay the OWNER for the use of said barge the sum of TEN (\$10.00) DOLLARS per day.

That the CHARTERER agrees to insure the barge CROWLEY No. 61 in the name of the OWNER, for the sum of SIX THOUSAND DOLLARS (\$6000.00) and to pay the premium on said insurance.

It is further mutually agreed that while the barge is under hire to the CHARTERER as aforesaid, the OWNER shall be under no personal liability for damage caused by such barge or any other causes to any cargo or goods or any other vessel or vessels, or the cargo thereof, or people thereon, or the crew of said barge, or men employed on board said barge, or to persons or property on shore; and the CHARTERER hereby assumes all of such risks and hereby undertakes and agrees to hold said barge and her OWNER harmless from all such

claims and the costs, expenses and attorney's fees on litigating the same, and all other claims of any kind or character, whether like or unlike these enumerated which shall arise from the use of said barge by the CHARTERER or from any act done on board or in loading, repairing or serving her.
[376]

THE CHARTERER agrees to return the barge to the moorings from where taken at beginning of this charter in the same good condition as received, and in witness whereof, the parties hereto have executed these presents this — day of ———, 1923.

A. PALADINI, INC.

By ALEX PALADINI,

Pres.

CROWLEY LAUNCH AND TUGBOAT CO.

By ROBERT W. GREENE.

BODEGA BAY.

PACIFIC OCEAN.

No. 18,142. U. S. Dist. Court, Nor. Dist. Calif.
Claimants' Exhibit "B." Aug. 12, 1924. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: Charter Barge No. 61. Paladini.
[377]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

ADMIRALTY—No. 18,142.

In re the Petition of A. PALADINI, INC., a Corporation, for Limitation of Liability.

(OPINION.)

September 10, 1924.

IRA S. LILLICK, Esq., and Messrs. HOEFLER, COOK & LINGENFELTER, Proctors for Petitioner.

Messrs. HEIDELBERG & MURASKY and JOS. J. McSHANE, Esq., Proctors for Claimants.

PARTRIDGE (Orally).—In this matter the case was tried before the court upon a petition for limitation of liability and, under settled principles in a limitation of liability proceeding, the Court is entitled and should determine whether there is any liability at all.

The facts are that a firm of contractors in this city, Healy, Tibbitts Company, had contracted with A. Paladini, Inc., for the construction of a wharf at Point Reyes. The contract provided that Paladini should transport the barge upon which was situated the pile-driver, and the men—that is, the Healy-Tibbitts Construction Company's employees—to Pt. Reyes and back. For the transportation of that barge, the Crowley Launch and Towboat Com-

pany furnished to Paladini a certain bridle which consisted of two steel or iron cables with a contrivance at the end by which the hawser turns freely. [378]

The barge containing the pile-driver and a large quantity of piles was towed by the power-boat "Three Sisters," belonging to A. Paladini, Inc., up to Pt. Reyes, and the wharf was completed.

The "Three Sisters" then undertook the towing of the barge and pile-driver back to San Francisco. She took on board the employees of the Healy, Tibbitts Construction Company and started out from Pt. Reyes. The evidence is conflicting as to the length of the hawser; the captain and deck-hand of the "Three Sisters" testifying the length of the hawser was from five to six hundred feet, and the members of the Healy, Tibbitts Construction Company's gang testifying that in length the hawser was not over two hundred feet. Most of the men were on the barge when it left Pt. Reyes. When it got outside, however, about the place where the light buoy is, these men left the barge and went aboard the "Three Sisters." Four of them sat down in the stern to play cards. The captain testifies that he warned these men that this was a dangerous place. This is denied by the men. It is not, however, denied that it was a dangerous place, for the reason that the experience of all seafaring men has shown that the vicinity of where the hawser is fastened, when the vessel has another vessel to tow, is a dangerous place. As the vessel left the light

buoy, she encountered a very heavy ground swell, coming west by north. I think the evidence satisfactorily shows that the real cause of the accident was these ground swells. After she had proceeded for some distance, the bridle—that is to say, the two steel cables that formed a part of the tow—parted and the result was that the end of the hawser attached to the “Three Sisters” swung around and severely injured two of these men. They have brought suit in the Superior Court and the petition of A. Paladini, Inc., is here for limitation of liability. [379]

In the first place, it is perfectly clear that the petitioner is entitled to limitation of liability, as the Supreme Court has pointed out that the statutes for the limitation of liability are amongst the most salutary we have for the building up of a merchant marine and should be given the fullest effect by these courts.

In the briefs, attention is called to the fact that I have heretofore held that under Section 33 of the Seamen’s Act, limitation statutes do not take away from a seaman the right to bring his action at common law. That holding, however, was entirely according to the terms of this section, which gives the seaman an election and the ground for that decision (which I think is correct) is that that election would not be possible if the seaman was compelled to come into Admiralty in a limitation proceeding. However, that may be, these men are not seamen; they were employees of an entirely different com-

pany and, of course, the Act does not apply to them at all.

I hold, therefore, that in any case, the vessel was entitled to limitation of liability.

But more than that, I am satisfied that there is no liability at all. The evidence in regard to the condition of the bridle and the length of the hawser is conflicting. I am satisfied, however, that the bridle was subjected to a proper inspection. The claimants insist that the doctrine of *res ipsa loquitur* should apply. I doubt very much it does apply whether or not these men were strictly passengers; whether it does apply or not, it seems to me the evidence is convincing that the accident was either an inevitable one or else that it was due to the ground swells. The evidence shows that owing to the ground swells, the "Three Sisters" was lifted on the crest of the swell at the same time the barge went down into the trough, thereby causing an unusual strain upon the cable. [380]

I think, therefore, the liability must be denied *in toto*. The parties will present a decree in accordance with this opinion.

[Endorsed]: Filed Sep. 10, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [381]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held in the courtroom thereof, in the City and County of San Francisco, on Wednesday, the tenth day of September, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable JOHN S. PARTRIDGE, District Judge.

No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

MINUTES OF COURT — SEPTEMBER 10, 1924 — ORDER THAT LIABILITY BE DENIED IN TOTO.

This matter having been heretofore heard and submitted, being now fully considered and the Court having rendered its oral opinion thereon, it was, in accordance with said opinion, ordered that the liability must be denied *in toto* and that a decree be signed, filed and entered herein.

Vol. 63, page 516. [382]

In the District Court of the United States of America, in and for the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., a Corporation, Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

FINAL DECREE.

A verified libel and petition having been filed in this court by the above-named petitioner on March 4, 1924, praying for exemption from or liability for certain loss, damage, destruction and injury growing out of a towage accident on board their motorship "Three Sisters" which occurred on or about the 8th day of June, 1923, on the waters of the Pacific Ocean off the coast of California, between the *point* of *Port* Reyes and the port of San Francisco.

And an order having been duly entered whereby it was referred to a Commissioner to take proof of and ascertain the value of the interest of the petitioner in the motorship "Three Sisters," and in her freight pending, under the statutes and rules in relation to exemption from and limitation of liability.

And the said Commissioner having reported the interest [383] of such petitioner in the vessel at the sum of fifteen thousand eight hundred and

ninety dollars (\$15,890), and that she had no freight pending on the voyage on which said accident occurred, which said voyage closed at the port of San Francisco on the 8th day of June, 1923, and petitioner having duly filed an approved stipulation in such amount.

And an order having been duly entered directing a monition to issue under the seal of this court against all persons claiming damages for any loss, destruction, damage or injury arising from or growing out of said accident, citing them to appear before this Court and make due proof of their respective claims on or before the 1st day of May, 1924, and designating Francis Krull, Esq., as the Commissioner before whom claims should be presented in pursuance of said monition.

And William Carlsen having presented a claim for personal injuries in the sum of fifty thousand nine hundred sixty dollars (\$50,960), and John Sauder having presented a claim for personal injuries amounting to fifty thousand eight hundred dollars (\$50,800), and Aetna Life Insurance Company, a corporation, having presented a claim for personal injuries to William Carlsen for fifty thousand nine hundred sixty dollars (\$50,960) claiming jointly with William Carlsen by reason of said Aetna Life Insurance Company's claimed right of subrogation under the Workmen's Compensation Insurance & Safety Act of 1917 of the State of California, and Aetna Life Insurance Company, a corporation, having presented a claim for personal injuries to John Sauder in the sum of fifty thou-

sand eight hundred dollars (\$50,800) claiming jointly with John Sauder by reason of said Aetna Life Insurance Company's claimed right of subrogation under the Workmen's Compensation Insurance & Safety Act of 1917 of the State of California; all of which claims more fully appear from the Commissioner's report on claim on file herein.

And no other person having presented any claim, and the [384] defaults of all other persons having been duly entered; and said claimants having answered the said libel and petition, and the case having come on for trial on the pleadings and proofs of the petitioner and of said claimants, and having been argued by the proctors of the respective parties; and the Court having filed its decision that the accident and the loss, destruction, damage and injury arising therefrom were not caused by the design or negligence of the petitioner, or with its privity or knowledge, as appears by the opinion on file.

Now, on motion of Ira S. Lillick, Esq., and Hoeffler, Cook & Lingenfelter, Esqs., proctors for petitioner, it is by the Court

ORDERED, ADJUDGED AND DECREED:

1. That the accident described in the libel and petition herein was not caused by the design or negligence of the petitioner, A. Paladini, Inc., a corporation, and did not occur with the privity or knowledge of said petitioner.

2. That said petitioner be and it is forever exempt and discharged from all liability for or on

account of any loss, damage, destruction or injury arising from or growing out of said accident.

3. That said claimants, William Carlsen, John Sauder and Aetna Life Insurance Company, a corporation, and each of them, their and each of their representatives, agents, assigns, attorneys and proctors, be and they are hereby forever restrained and enjoined from commencing, prosecuting or maintaining any action or actions in any court whatsoever against said petitioner by reason of said accident.

4. That said petitioner recover from said claimants its costs incurred in establishing its exemption from liability in this proceeding, taxed at the sum of two hundred eighty-six 65/100 dollars (\$286.65).

Dated October 15th, 1924.

JOHN S. PARTRIDGE,

United States District Judge. [385]

Receipt of a copy of the within proposed final decree admitted this 17th day of September, 1924.

HEIDELBERG & MURASKY and

JOS. J. McSHANE,

Proctors for Claimants William Carlsen and John Sauder.

BELL & SIMMONS,

Proctors for Claimant Aetna Life Insurance Company, a Corporation.

[Endorsed]: Entered in Vol. 17, Judg. and Decrees, at page 456.

Lodged Sep. 18, 1924. Walter B. Maling, Clerk.
By C. W. Calbreath, Deputy Clerk. [386]

In the District Court of the United States of America in and for the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., a Corporation, Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

NOTICE OF APPEAL.

To A. Paladini, Inc., Petitioner in the Above-entitled Cause, and to Messrs. Hoeffler, Cook & Lingenfelter and Ira S. Lillick, Its Proctors, and to W. B. Maling, Clerk of the United States District Court for the Southern Division of the Northern District of California, Third Division, in Admiralty.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE, that William Carlsen, John Sauder and Aetna Life Insurance Company, a corporation, claimants in the above-entitled cause, do and each of them does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of the District Court of the United States for the Southern Division of the Northern District of California, Third Division, sitting in Admiralty, entered in the above-entitled cause on the 15th day of October, 1924, and from the whole of said final decree.

Dated: San Francisco, California, November 17th, 1924.

BELL & SIMMONS,
REDMAN & ALEXANDER,
JOSEPH J. McSHANE,
HEIDELBERG & MURASKY,

Proctors for Claimants. [387]

Receipt of a copy of the within notice of appeal is admitted this 17 day of November, 1924.

IRA S. LILLICK,
HOEFLER, COOK & LINGENFELTER,
Proctors for Petitioners.

[Endorsed]: Filed Nov. 18, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [388]

In the District Court of the United States of America, for the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., a Corporation, Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

ASSIGNMENT OF ERRORS.

Now comes William Carlsen, John Sauder and Aetna Life Insurance Company, a corporation, appellants in the above-entitled cause, and assigns, and each of them assigns, errors therein as follows:

I.

The District Court erred in adjudging in its final decree of date October 15th, 1924, that the accident described in the libel and petition was not caused by the negligence of petitioner, and in adjudging that said accident did not occur with the privity or knowledge of petitioner.

II.

The District Court erred in adjudging in said final decree that petitioner be and is forever exempt and discharged from all liability for or on account of any loss, damage, destruction or injury arising from or growing out of said accident, in so far as said final decree applies to appellants.

III.

The District Court erred in said final decree in restraining and enjoining appellants, or any of them, or [389] their representatives, agents, assigns, attorneys or proctors from commencing, prosecuting or maintaining any action or actions in any court against said petitioner by reason of said accident.

IV.

The District Court erred in said final decree in adjudging that petitioner recover from appellants any costs in said proceeding.

V.

The District Court erred in adjudging that petitioner was not liable to appellants at all.

VI.

The District Court erred in adjudging that petitioner was entitled to limit its liability in respect to

the claims of appellants, or the claim of any of them.

VII.

The District Court erred in not entering a decree adjudging that petitioner was liable to appellants and each of them, for all loss, damage and injury sustained by them growing out of the accident described in the libel and petition herein.

VIII.

The District Court erred in not entering a decree adjudging that petitioner was not entitled to limit its said liability with respect to the claims of appellants.

IX.

The District Court erred in its opinion in finding and stating that the vessel "Three Sisters" on the voyage involved in the case "encountered a very heavy ground swell." [390]

X.

The District Court erred in its opinion in finding and stating that "the evidence satisfactorily shows that the real cause of the accident was these ground swells."

XI.

The District Court erred in not finding and holding that on said voyage the vessel encountered only ordinary ground swells of the kind usually encountered and to be expected in the waters in question at the time in question.

XII.

The District Court erred in its opinion in finding and stating that the bridle with which the

“Three Sisters” was towing the barge “was subjected to a proper inspection.”

XIII.

The District Court erred in its opinion in finding and stating that “the evidence in convincing that the accident was either an inevitable one, or else that it was due to the ground swells.”

XIV.

The District Court erred in its opinion in finding and stating that “the evidence shows that owing to the ground swells the ‘Three Sisters’ was lifted on the crest of the swell at the time that the barge went down into the trough, thereby causing an unusual strain upon the cable.”

XV.

The District Court erred in not finding and holding that the accident was not inevitable.

XVI.

The District Court erred in not finding and holding that the bridle used by the “Three Sisters” was unsound, [391] rotten and defective, and that the accident resulted from such condition thereof, and that petitioner is liable therefor.

XVII.

The District Court erred in not finding and holding that if the accident was due to ground swells, it was not inevitable and that petitioner is liable therefor.

XVIII.

The District Court erred in not finding and holding that neither the master nor the single deck-hand constituting the entire crew of the “Three

Sisters" ever inspected the towing equipment used by her, and that petitioner is therefore liable.

XIX.

The District Court erred in not finding and holding that no one inspected the towing equipment used by the "Three Sisters" at the beginning of the voyage from Point Reyes, the voyage on which the accident occurred, and that petitioner is therefore liable.

XX.

The District Court erred in not finding and holding that no one inspected such towing equipment before the beginning of the voyage from San Francisco to Point Reyes, and that petitioner is therefore liable.

XXI.

The District Court erred in not finding and holding that neither Carlton, Davis nor Krueger, employed by petitioner, were competent to fill their respective positions and that petitioner is therefore liable. [392]

XXII.

The District Court erred in not finding and holding that the master of the "Three Sisters" on the voyage on which the accident occurred, negligently managed his tow, in that he towed with too short a tow-line, did not vary the length thereof or manipulate his engines in order to keep the tow safe, and that petitioner is therefore liable.

XXIII.

The District Court erred in its opinion in finding and stating that the place where the injured ap-

pellants were on the "Three Sisters" at the time of the accident was a dangerous place, and in finding and stating that "the experience of all seafaring men has shown that the vicinity of where the hawser is fastened, when the vessel has another vessel in tow, is a dangerous place."

XXIV.

The District Court erred in not finding and holding that if the place where the injured appellants were at the time of the accident was a dangerous place, the master failed to warn the injured appellants therefrom, and failed to see to it that they did remove therefrom, and that petitioner is therefore liable to appellants.

XXV.

The District Court erred in not finding and holding that where the injured appellants were on said vessel was a safe and proper place for them to be.

XXVI.

The District Court erred in not finding and holding that petitioner was privy to and had knowledge of the unsound, rotten and defective condition of said towing bridle and of the incompetence and negligence of its employees aforesaid. [393]

XXVII.

The District Court erred in not finding and holding that the negligence of its master was petitioner's negligence under the Limitation of Liability Acts.

XXVIII.

The District Court erred in not holding and finding that the negligence of its port engineer was peti-

tioner's negligence under the Limitation of Liability Acts.

XXIX.

The District Court erred in not finding and holding that petitioner is not entitled to limit its liability because its master and port engineers were incompetent.

XXX.

The District Court erred in not finding and holding that petitioner is not entitled to limit its liability for the reason that the injured appellants were passengers and petitioner failed to comply with the inspection laws of the United States.

XXXI.

The District Court erred in failing to take into consideration the provisions of Section 4493 of the Revised Statutes of the United States, the amendments thereto, and the provisions therein referred to.

Dated: November 17th, 1924.

BELL & SIMMONS,
REDMAN & ALEXANDER,
HEIDELBERG & MURASKY,
JOSEPH J. McSHANE,

Proctors for Appellants. [394]

Receipt of a copy of the within assignment of errors is admitted this 17th day of November, 1924.

HOEFFLER, COOK & LINGENFELTER,
IRA S. LILLICK,

Proctors for Claimants.

[Endorsed]: Filed Nov. 18, 1924. Walter B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [395]

In the District Court of the United States of America, for the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,142.

In the Matter of the Petition of A. PALADINI, INC., a Corporation, Owner of the Motorship "THREE SISTERS," for Limitation of Liability.

STIPULATION AND ORDER RE ORIGINAL EXHIBITS.

IT IS HEREBY STIPULATED by the parties hereto that petitioner's original exhibit numbered four (4) and claimant's original Exhibit "A" introduced in evidence at the trial hereof, may be sent up to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: November 17th, 1924.

BELL & SIMMONS,
REDMAN & ALEXANDER,
JOSEPH J. McSHANE,
HEIDELBERG & MURASKY,
Proctors for Appellants.

HOEFLER, COOK & LINGENFELTER,
IRA S. LILLICK,

Proctors for Appellee.

It is so ordered.

November 18, 1924.

BOURQUIN,
District Judge.

[Endorsed]: Filed Nov. 18, 1924. Walter B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.
[396]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO APOSTLES ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 396 pages, numbered from 1 to 396, inclusive, contain a full, true and correct transcript of the records and proceedings, in the Matter of the Petition of A. Paladini, Inc., owner of the Motorship "Three Sisters," for Limitation of Liability, No. 18,142, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to the praecipe for the apostles on appeal and the instructions of the proctors for appellants herein.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of one hundred seventy-one dollars and seventy cents (\$171.70), and that the same has been paid to me by the proctors for the appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 30th day of December, A. D. 1924.

[Seal]

WALTER B. MALING,

Clerk.

By C. W. Calbreath,

Deputy Clerk. [397]

[Endorsed]: No. 4452. United States Circuit Court of Appeals for the Ninth Circuit. William Carlson, John Sauden and Aetna Life Insurance Company, a Corporation, Claimants of the Motorship "Three Sisters," Appellants, vs. A. Paladini, Inc., a Corporation, Appellee. Apostles on Appeal. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filed December 30, 1924.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.